ANNEXURE A
THE WORKING COMMITTEE'S PROPOSED UNFAIR CONTRACTUAL TERMS BILL

To provide that a court may rescind or amend contracts which are contrary to good faith.

To be introduced by the Minister of Justice

BE IT ENACTED by the President and the Parliament of the Republic of South Africa, as follows:

Court may rescind or amend unfair contractual terms

1.(1) If a court, having regard to all relevant circumstances, including the relative bargaining positions which parties to a contract hold in relation to one another and the type of contract concerned, is of the opinion that the way in which the contract between the parties came into being or the form or content of the contract or any term thereof or the execution or enforcement thereof is unreasonable, unconscionable or oppressive, the court may rescind or amend the contract or any term thereof or make such other order as may in the opinion of the court be necessary to prevent the effect of the contract being unreasonably prejudicial or oppressive to any of the parties, notwithstanding the principle that effect shall be given to the contractual terms agreed upon by the parties.

(2) In deciding whether the way in which a contract came into existence or the form or content of the contract or any term thereof is contrary to the principles set out above,
those circumstances shall be taken into account which existed at the time of the conclusion of the contract.

Application of Act

2.(1) The provisions of this Act shall apply to all contracts concluded after the commencement of this Act.

(2) Any agreement or contractual term purporting to exclude the provisions of this Act or to limit the application thereof shall be void.

(3) This Act shall be binding upon the State.

Short title

The Act shall be called the Unfair Contractual Terms Act, 19.. .
BIBLIOGRAPHY
LEGISLATION:

The Constitution of the Republic of South Africa Act 200 of 1993
Consumer Affairs Act 7 of 1996
General Law Amendment Act 32 of 1952
Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

BOOKS AND CHAPTERS IN EDITED COLLECTIONS:

Chomsky N Radical priorities (1981) Black Rose: Montréal


Van der Merwe et al (1994) *Kontraktereg Algemene Beginsels* Juta en Kie Bpk: Kenwyn


Van Zyl DH (1991) *Justice and equity in Greek and Roman legal thought* Academica: Pretoria
JOURNALS AND PERIODICALS:

Adams JN & Brownswood R ‘The ideologies of contract’ (1987) 7 Legal Studies 205


Douzinas C ‘Human rights and postmodern utopia’ (2000) Law and Critique 219


Du Plessis LM ‘Lawspeak as text ... and textspeak as law: Reflections on how jurists work with texts - and texts with them’ (2001) 118 The South African Law Journal 794

Du Plessis P ‘Good faith and equity in the law of contract in the civilian tradition’ (2002) 65 Tjdskrif vir die Hedendaagse Romens-Hollandse Reg 397


Grové NJ ‘Kontraktuële Gebondenheid, die Vereistes van die Goeie trou, Redelikheid en Billikheid’ (1998) 61 THRHR 687

Hanekom D ‘Beware the silence: a cautionary approach to civic republicanism’ (2003) 18 SAPR/PL 139


Hawthorne L ‘Public policy and micro-lending – has the unruly horse died?’ (2003) 66 Tydskrif vir die Hedendaagse Romeins-Hollandse Reg 116


Jamneck J ‘Die Konsepwet op die Beheer van Kontrakbedingew, 1994’ (1997) 4 Tydskrif vir die Suid-Afrikaanse Reg 637


Kerr AJ ‘Does a claim for rectification depend on a mistake having been made and/or upon the requirements of the exceptio doli generalis being met?’ (1982) 45 Tydskrif vir die Hedendaagse Romeins-Hollandse Reg 86

Klare K ‘Contracts Jurisprudence and the First-Year Casebook’ 54 NYU Law Review 876


Lubbe GF ‘Bona Fides, Billikheid en die Openbare Belang in die Suid-Afrikaanse Kontraktereg’ (1990) 1 Stellenbosch Law Review 7


Van der Merwe D ‘The Roman-Dutch law: from virtual reality to constitutional resource’ (1998) 1 Tydskrif vir die Suid-Afrikaanse Reg 1

Van der Merwe D ‘A rhetorical-dialectical conception of the common law – Aristotelian influence on the genesis of Roman legal science’ (2002) 1 Journal of South African Law 77


Van der Vyfer JD ‘The private sphere in constitutional litigation’ (1994) 57 Tydskrif vir die Hedendaagse Romeins-Hollandse Reg 378


Van der Walt CFC ‘Kontrakte en Beheer oor kontrakteervryheid in ‘n nuwe Suid-Afrika’ (1991) 54 Tydskrif vir die Hedendaagse Romeins-Hollandse Reg 367

Van der Walt CFC ‘Aangepaste Voorstelle vir ‘n Stelsel van Voorkomende Beheer oor Kontrakteervryheid in die Suid-Afrikaanse Reg’ (1993) 56 Tydskrif vir die Hedendaagse Romeins-Hollandse Reg 65
Van der Walt CFC ‘Beheer oor onbillike kontraksesbedinge – quo vadis vanaf 15 Mei 1999?’ (2000) 1 Tydskrif vir die Suid-Afrikaanse Reg 33


Van Marle K ‘In support of a revival of utopian thinking, the imaginary domain and ethical interpretation’ (2002) 3 Tydskrif vir die Suid-Afrikaanse Reg 501

LAW COMMISSION WORKS:


UNPUBLISHED WORK:


NEWSPAPERS:

Beeld, Monday 20 May 2002, Sake-Beeld 10

INTERNET RESOURCES:


Cicero *De Officiis* located at http://www.stoics.com/cicero_book.html#BOOK3


http://labienus.home.texas.net/Patrons.html


www.philosophypages.com

www.projectliteracy.org.za
LIST OF CASES CITED:

2. *Arprint Ltd v Gerber Goldsmidt Group South Africa (Pty) Ltd* 1983 1 SA 254 (A)
3. *Baart v Malan* 1990 2 SA 862 (E)
4. *BK Tooling (Edms) Bpk v Scope Engineering (Edms) Bpk* 1979 (1) SA 391 (A)
5. *Bank of Lisbon & South Africa Ltd v De Ornelas* 1988 3 SA 580 (A)
6. *Basson v Chilwan and Others* 1993 (3) SA 742 (A)
7. *Botha (now Griessel) and Another v Finanscredit (Pty) Ltd* 1988 (2) SA 454 (C)
8. *Brisley v Drotzky* 2002 (4) SA 1 (SCA)
10. *Burger v Central South African Railways* 1903 TS 571
11. *Capecan (Pty) Ltd t/a Canon Western Cape v Van Nimwegen and Another* 1988 (2) SA 454 (C)
12. *Coin Sekheidsgroep (Edms) Bpk v Kruger en ’n Ander* 1993 (3) SA 564 (T)
13. *Collins v Blantern 2 Wilson* 347 (1767)
15. *De Klerk v Ou Mutual Insurance Co Ltd* 1990 (3) SA 34 (W)
16. *Donelly v Barclays International Bank* 1990 (1) SA 375 (W)
17. *Eerste Nasionale Bank van Suidelike Afrika v Snyman* 1997 (4) SA 302 (A)
19. *Investigative Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In Re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* 2001 (1) SA 545 (CC)
20. *Jajbhay v Cassim* 1939 AD 537
21. *Janse van Rensburg v Grieve Trust CC* 2001 (1) SA 315 (C)
22. *Juglal NO and Another v Shoprite Checkers (Pty) Ltd t/a OK Franchise Division* 2004(5) SA 248 (SCA)
23. *Kuhn v Karp* 1948 (4) SA 825 (T)
24. Magna Alloys and Research (SA) (Pty) Ltd v Ellis 1984 (4) SA 874 (A)
25. Mort NO v Henry Shields-Chiat 2001 (1) SA 464 (C)
26. National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others 1999 (1) SA 6 (CC)
27. National and Overseas Distributors Corporation (Pty) Ltd v Potato Board 1958 (2) SA 473(A)
28. NBS Boland Bank v One Berg River Drive CC and Others; Deeb and Another v ABSA Bank Ltd; Friedman v Standard Bank of SA Ltd 1999 (4) SA 928 (SCA)
29. Ndlovu v Ngoboz; Bekker and Another v Jiha 2003 (1) SA 113 (SCA)
30. Paddock Motors(Pty) Ltd v Ingesund 1976 (3) SA 16 (A)
31. Pangbourne Properties LTD v Nitor Construction (Pty) Ltd and Others 1993 (4) SA 206 (W)
32. Price Waterhouse Coopers Inc And Others v National Potato Co-Operative Ltd 2004 (6) SA 66 (SCA)
33. Preller and Others v Jordaen 1956 (1) SA 506 (AD).
34. Printing and Numerical Registering Co v Sampson 1875 LR 19 Eq 462
35. Raffey v Catterall, Edwards & Goudré (Pty) Ltd 1977 (4) SA 494 (N)
36. S v Makwanyane 1995 (3) SA 391 (CC)
37. Saambou-Nasionale Bouwvereniging v Friedman 1979 3 SA 978 (A)
38. SA Sentrale Ko-op Graanmaatskappy Beperk v Shifren en Andere 1964 (4) SA 760 (A)
39. Sasfin (PTY) LTD v Benkes 1989 (1) SA 1 (A)
40. Sayed v Editor, Cape Times, and Another 2004 (1) SA 58 (C)
41. Shoprite Checkers (Pty) Ltd v Bumpers Schwarmas CC and Others 2002 (6) SA 202 (C)
42. South African Forestry Co Ltd v York Timbers 2005 (3) SA 323 (SCA)
43. Standard Bank of SA Ltd v Wilkinson 1993 (3) SA 822 (C)
44. Tjollo Ateljees (Eins) Bpk v Small 1949 (1) SA 856 (A)
45. Visser en 'n Ander v Rousseau en 'n Ander 1990 (1) SA 139 (A)
46. Van der Merwe v Meades 1991 (2) SA 1 (A)
47. Waltons Stationery Co (Edms) Bpk v Fourie 1994 (4) SA 507 (O)
48. Weinerlich v Goch Buildings Ltd 1925 AD 282
49. Zuurbekom Ltd v Union Corporation 1974 (1) SA 514 (A)