DEDICATION

The South African author MER wrote about the nature of “givers” (in Afrikaans “gewers”) in one of her literary works, and referred to them as people who are inherently decent, who lead from the front but would nevertheless not hesitate to turn around to assist others. This succinctly describes our colleague, mentor, lecturer and friend Johan Scott.

Tobias Johannes Scott holds the degrees BA (cum laude); LLB (cum paude) and BA(Hons) Latin (cum laude). He completed his Dr Iuris in Leyden, the Netherlands in 1976 under the supervision of Prof R Feenstra on “Die geskiedenis van die ooorerflikheid van aksies op grond van onregmatige daad in die Suid-Afrikaanse reg “. He was admitted as an Advocate of the High Court of South Africa in 1969. He started his academic career as a junior lecturer in 1967 in the Department of Mercantile Law, University of Pretoria. In 1968 he was transferred to the Department of Private Law where he remained until his retirement in 2010. He was appointed as a professor emeritus in 2011. He held a membership in the South African Law Teachers' Association since 1969; of which he was the Vice-President in 1990 and President from 1991-1993. Johan is also a member of South African Association of Legal Historians; and President of its predecessor association from 1984-1985, and a member of “Dispuut Philips van Leyden” (Leyden Society of Legal Historians) since 1976.

Johan’s career spanned some of the most tumultuous times in our legal history, from the heyday of apartheid to the current and still challenging constitutional state we as a developing nation find ourselves in. Still actively publishing and supervising postgraduate students after his retirement, Johan clearly has the ability to move with and adapt to the times.

He greatly influenced the careers of his students, colleagues and peers. Whilst the Law of Delict was one of the most challenging modules in our law curriculum, Johan had the ability to present it in such a logical and structured manner that in most years he was nominated as Lecturer of the Year by his students. He had and still has the ability to simplify and explain intricate concepts with reference to an extensive body of case law that he manages to recall in an instant. As a dedicated academic, he remained at the top of his field for many decades and was an exceptional mentor to many students and academics.

Johan is a productive researcher and a scholar at heart. Even after his retirement, he has continued to publish actively and is still supervising postgraduate students.

His extensive body of scholarly works benefited our legal system and will continue to do so for many decades. He was never afraid to criticise the judgments and the opinions of others in the pursuit of clarity and legal certainty, but never in a belittling or malevolent manner. And yes, he always gave credit where credit was due. To this day, his censures on the
failure to distinguish between the criteria of wrongfulness and fault ring in the ears of many jurists – if they only were to listen.

As Head of the Department of Private Law for many years he managed to steer the course and build a strong skills base in the Faculty of Law. As a longstanding member of Senate, the Council of the University of Pretoria and numerous committees he loyally represented his colleagues and contributed in an advisory capacity on complex issues, always choosing the honourable and sensible solution.

During his travels abroad Johan built up a wide network of international scholars who over time became a valued circle of friends, many of whom spent enriching moments in his company and who contributed to this Festschrift. Contributors were requested to write in their home language, and furthermore to submit their contributions for publication in other journals worldwide, specifically accrediting this Festschrift in order to expand access worldwide to the wonderful contributions written in honour of our colleague.

Great scholars like Johan never retire. They might go fishing more than they could in the past, but his calling of being a true teacher will never fade. Scholars like Johan understand that the present and the future are inevitably linked to the past, and although education depends on talent and performance, it should always serve to build character and a vision for future generations.

Amicitiae nostrae memoriam spero sempiternam fore

Prof Birgit Kuschke
Prof Steve Cornelius
ACKNOWLEDGMENTS

We wish to thank Susan Scott, Johan’s spouse, for her assistance in this project and for compiling a list of his friends and colleagues who would want to contribute to this Festschrift. Thank you also to his daughter Henda for extracting Johan’s latest comprehensive curriculum vitae from him without detection.

To our administrative assistants in this project, Nicole Diedericks and Daniel Badenhorst, we want to extend our gratitude for assisting during difficult and challenging times in receiving and editing contributions via unstable networks and with limited access to resources, and for compilation of the Bibliography.

A big thank you to Lizette Hermann, the Pretoria University Law Press (PULP) and the funders of this project.

Finally we express our gratitude and appreciation to all our contributors, for sharing their academic outputs and expertise with us in Johan’s honour, and for their kind words, patience and the role that they played in Johan’s academic career.

Bona opera in perpetuum
PUBLICATIONS OF JOHAN SCOTT

Chapters in Books

Chapters on Suretyship and Real Security in Van Jaarsveld (ed) Suid-Afrikaanse Handelsreg (Lex Patria 1978)
Chapter on Real Security in Suid-Afrikaanse Handelsreg (2nd ed Lex Patria 1983) vol 2
Co-author with Grové NJ of Chapter on Suretyship in Suid-Afrikaanse Handelsreg (Lex Patria 1978)
Chapters in Our Legal Heritage (Butterworths, 1982) viz: “Medieval Law – The European Scene from the Sixth to the Fifteenth Century” & “The Transvaal Legal Scene 1836-1910”
Chapters (Sakeregtelike Begrippe (pp 9-27) and Serwitute en Beperkende Voorwaarden in (Susan Scott - editor) Werkboek vir Sakereg (Digma Publications, 1988)
Chapters on Suretyship and Real Security in Suid-Afrikaanse Handelsreg (3rd ed Lex Patria 1988) vol 1
CSRA Guidelines for Hydraulic Design and Maintenance of River Crossings: Vol VII – Legal Aspects (Committee of State Road Authorities, 1994) ix; 29
Aspects of Products Liability, the “reasonable man” test and employers’ liability (J van Tonder Consultants, 1995)

Co-author with Neethling J and Potgieter JM Case Book on the Law of Delict/ Vonnisbundel oor die Deliktereg 5th ed (Juta 2013)

Journal articles and other publications

“Weer eens art 2 van Wet 37 van 1953” 1970 *Scintilla Iuris* 49-59

“Die Toets vir Onregmatigheid – ’n Klip in die Bos” 1972 *Scintilla Iuris* 29-39

“Legal concepts commencing with the letters L and M” in *Ensiklopedie van die Wêreld* (Albertyn Publishers), 1972

“S v Brick 1973 2 SA 571 (A)” 1973 *De Jure* 84

Co-author with Thomas Ph J “Aspekte van die Tenuitvoerlegging van die Vryheidstraf in Nederland” 1975 *De Jure* 50

“Actio Personalis Moritur cum Persona” 1976 *THRHR* 288

“Oor die Aard van ons Fundamentele Deliksakties” 1976 *De Jure* 170

“Uit ons ou Bronne: Regspraktisyne” 1977 *De Rebus Procuratoriis* 489-490

“From the old authorities: The Accessibility of our old Authorities” 1977 *De Rebus Procuratoriis* 726-729.

“Uit ons ou Bronne: Die Ontsyfering van vroeë Regsbronne” 1978 *De Rebus Procuratoriis* 199-201

“Minister van Polisie v Skosana 1977 1 SA 31 (A)” 1977 *De Jure* 186

“Aspekte van die Oorerlilikheid van Genoegdoeningseise” 1977 *THRHR* 131

“Ons Regserfenis: C H van Zyl” 1978 *De Rebus Procuratoriis* 301

“From the old Authorities: Bartolus’ treatise on Rivers” 1978 *De Rebus Procuratoriis* 377

“Ons Regserfenis: J G Kotze” 1978 *De Rebus Procuratoriis* 558

“Uit ons ou Bronne: Gedigte om en deur Hugo de Groot” 1978 *De Rebus Procuratoriis* 564

“Passive Transmissibility of Delictual Actions in Old Canon Law” 1978 *Acta Juridica* 15

“Kazazis v Georghiades ea 1979 3 SA 886 (T)” 1979 *De Jure* 387

“Die reël imperitia culpae adnumeratur as grondslag vir die nalatigheidstoets vir deskundiges in die Suid-Afrikaanse Reg” *Peters Fontes - L C Steyn-gedenkbundel* (Society Hugo de Groot, 1980) 124

“Uit ons ou Bronne: Oor die Resepsie van Romeins-Hollandse Strafregreëls in die Transvaal” 1980 *De Rebus* 138-140

“Enkele Gedagtes oor die Beskikbaarheid en Ontsyfering van ou Regsbronnen” 1981 *De Jure* 166

“Aspekte van Sekerheidstelling deur middel van Roerende Sake” 1981 *De Jure* 142

“Die Lewe en Betekenis van Hugo de Groot” 1983 *THRHR* 123

“Smit v Suid-Afrikaanse Vervoerdienste 1984 1 SA 246 (K)” 1984 *THRHR* 342

“Some Reflections on Section 1(1)(a) of the Apportionment of Damages Act and Contributory Intent” in *Huldigingsbundel Paul van Warmelo* (UNISA) (1984) 166

“Deliktereg 1985 – ’n Besinning oor Teorie, Praktyk en Onderrig” 1985 *De Jure* 122

“Cowley v Hahn 1987 1 SA 440 (OK)” 1987 *De Jure* 181

publications

"Uit ons ou Bronne: Voorwoorde" 1988 De Rebus Procuratoris 659
"Sekerheidstelling deur middel van roerende sake – uiteindelik regsekerheid?" 1989 De Jure 119
"Verpligte Latyn vir die Advokaat: 'n Pleidooi om Behoud" 1989 De Jure 335
"Aspects of Delictual Liability of a Foreign Prodigal for Intentional Misrepresentation" 1990 De Jure 146
"Latin for Lawyers – a Reply" 1990 De Jure 397
"Latyn en Regsopleiding. Deel I. Wat verlang die regsberoep?" 1990 (1) Codicillus 19
"Knowledge of the Law: The Real Value for the Recreation and Sport Practitioner" Recreation, Sport and the Law (SA Association for Recreation and Tourism, 1991) 1
"Noodweer (oordadigheid) in deliktereg nie suiwer objektief ex post facto getoets" 1991 THRHR 299
"Vrystaate Lewendehawe Koöp Bpk v De Klerk en Zinman 1989 1 SA 632 (O); Landboukreditraad v Vrystaat Lewendehawe Koöp Bpk 1990 1 SA 106 (A)" 1991 De Jure 170
"Informed consent to treatment – interpretation was discriminatory: Prof Scott replies" 1992 De Rebus 1026-1027
"The future of our Roman-Dutch law: Reflections and a suggestion" 1993 De Jure 394
"Lever v Purdy 1993 3 SA 17 (A)" 1993 De Jure 435
"Fesi v Ketye 1994 2 SA 507 (SOK)" 1994 De Jure 189
"Administrateur, Transvaal v Van der Merwe 1994 4 SA 347 (A)" 1995 De Jure 233
"Die kriterium vir die berekening van bydraende nalatigheid - enkele gedagtes" 1995 TSAR 127
"The application of the reasonable foreseeability test for negligence" 1995 THRHR 128
"Die regsgplig by 'n late en die veroorsaking van suiwer ekonomiese verlies: Beleidsoorwegings gee die deurslag" 1995 De Jure 158
"Negligent misrepresentation in the guise of a non-disclosure" 1995 TSAR 778
"n Verrassende arbeidsregtelike bron van deliksbeginsels" 1996 De Jure 331
"Cape Town Municipality v Butters 1996 1 SA 473 (C)" 1996 De Jure 379
"Greater Johannesburg Transitional Metropolitan Council v ABSA Bank Ltd t/a Volkskas Bank 1997 2 SA 591 (W)" 1997 De Jure 399
"Kritzinger v Steyn en Andere 1997 3 SA 686 (K)" 1997 De Jure 409
"Limits of private defence in the law of delict: Minister of Law and Order v Milne" 1998 THRHR 318
"Ncoyo v Commissioner of Police, Ciskei and Others 1998 1 SA 128 (CkSC)" 1998 De Jure 179
"Mpongwana v Minister of Safety and Security 1999 2 SA 795 (C)" 1999 De Jure 340
"Duitse Deliktsrecht-gewysdes as komplimentêre bron vir ons Deliktereg: 'n Vergelykende studie" 2000 TSAR 178
"The definition of delictual negligence revisited: Three recent judgments of the Supreme Court of Appeal" 2000 De Jure 358
"Some reflections on vicarious liability and dishonest employees" 2001 Acta Juridica 265
"Deliktuele aanspreeklikheid vir veroorsaking van suiwer ekonomiese verlies: die deur word verder oogpagmaa" 2001 THRHR 681
“Rastafarians, cannabis smoking and religious freedom: A recent judgment from Germany” 2001 SA Publickreg/Public Law 403

“Re-affirmation of the doctrine of immunity of municipalities against liability for wrongful omissions assessed and rejected Cape Town Municipality v Bakkerud 2000 3 SA 1049 (SCA)” 2001 THRHR 502

“The Cape Metropolitan Council v Noel Raymond Graham case no 157/1999” 2001 De Jure 198

“Ntamo v Minister of Safety and Security 2001 1 SA 830 (Tk HH)” 2001 De Jure 404

“Grootboom v Graaff-Reinet Municipality 2001 3 SA 373 (E)” 2001 De Jure 635

“Ntamo v Minister of Safety and Security 2001 1 SA 830 (Tk H)” 2001 De Jure 404

“The Cape Metropolitan Council v Noel Raymond Graham Case No 157/99 (C)” 2001 De Jure 198

“Cape Town Municipality v Bakkerud 2000 3 SA 1049 (SCA)” 2001 THRHR 502

“Dersley v Minister van Veiligheid en Sekuriteit 2001 1 SA 1047 (T)” 2001 THRHR 681

“Kgaleng v Minister of Safety and Security 2001 4 SA 854 (W)” 2002 De Jure 342

“Die actio de pauperie oorleef ’n woeste aanslag – Loriza Brahman v Dippenaar 2002 2 SA 477 (HHA)” 2002 TSAR 194

“Stopping and driving in the emergency lane – Road Accident Fund v Odendaal 2004 1 SA 585 (W)” 2005 THRHR 166

“Enkele gedagtes oor Afrikaans as bedreigde regstaal” 2006 De Jure 178

“Uiteindelik sekerheid oor die ware grondslag van die deliktuele vordering van ’n kind weens voorbeeldertlike beseerings: Road Accident Fund v Mtati 2005 6 SA 215 (SCA)” 2006 TSAR 617

“Eskom Holdings Ltd v Hendricks 2005 5 SA 503 (SCA)” 2006 De Jure 213

“K v Minister of Safety and Security 2005 6 SA 419 (CC)” 2006 De Jure 471

“Minister of Safety and Security v Luiters 2006 4 SA 160 (SCA)” 2006 De Jure 689

“Some reflections on a vicariously liable employer’s right of recourse” Gedenkbundel vir LMT Labuschagne (LexisNexis/Butterworths 2006) 197

“MEC for Publics Works, Eastern Cape v Faltein 2006 5 SA 532 (SCA)” 2007 De Jure 182

“Casino operator not liable for delictual act committed by one patron against another – Tsogo Sun Holdings (Pty) Ltd v Quing-He San 2006 6 SA 537 (SCA)” 2007 THRHR 501

“Deliktuele vorderings teen die polisie: nienakoming van ’n statutêre vervaltermyn en noodweersoorskryding – Mugwena v Minister of Safety and Security 2006 4 SA 150 (HHA)” 2007 TSAR 188

“Middellike aanspreeklikheid van die staat weens manipulasie van ’n tenderproses – Minister of Finance v Gore 2007 1 SA 111 (HHA)” 2007 TSAR 569


“Erkenning van meineed as eisoorsaak in die deliktereg – Black v Joffe 2007 3 SA 171 (K)” 2007 TSAR 800

“The difficult process of applying easy principles: Three recent judgments on via ex necessitate ’ 2008 De Jure 164

“Die vasstelling van nalatigheid tydens optrede in ’n situasie van skielike gevaar – RAP v Grobler 2007 6 SA 230 (HHA)” 2008 TSAR 358

“Failure by a passenger to hold railroad operator liable for damage occasioned by robbery on a train – Shabalala v Metrorail 2007 3 SA 167 (W)” 2008 THRHR 32
“To confront or not to confront: The police officer’s dilemma – Minister of Safety and Security v Mohofe 2007 4 SA 215 (SCA)” 2008 THRHR 506

“The sting of an ancient remedy in present times: Caveant dog owners! Vitae perit, labor non moritur. Liber memoriais PJ Visser (2008) 95


“Die moontlike aanspreeklikheid van ’n werkuitgewer vir die onregmatige daad van sy werkmaannemer onder die loep” 2009(1) Regsprak (Official Law Journal of the Solidary Institute for Constitutional and Labour Studies) 3

“The possibility of a principal’s liability for the delict of an independent contractor” 2009 THRHR 667

“Railroad operator’s failure to protect passenger against attack on train not negligent – Shabalala v Metrorail 2008 3 SA 142 (SCA)” 2009 THRHR 156

“Owerheidsaanspreeklikheid vir slaggate in openbare paaie – Macintosh v Premier, KwaZulu-Natal 2008 6 SA 1 (HHĀ)” 2009 TSAR 392

“Middellike aanspreeklikheid van die staat vir misdadige polisie-optrede: die heilsame ontwikkeling duur voort” 2011 TSAR 135

“Effect of the destruction of a dwelling on the personal servitude of habitatio – Kidson v Jimspeed Enterprises CC” 2011 THRHR 155

“Die conductio furtiva: Gepaste remedie of deus ex machina, Crots v Pretorius 2010 6 SA 513 HHA” 2011 THRHR 383

“Die Hoogste Hof van Appèl smoer heilsame regsontwikkeling Minister of Safety and Security v F 2011 3 SA 487 (HHĀ)” 2011 TSAR 773

“Middellike aanspreeklikheid van die staat vir misdadige polisie-optrede – Die heilsame ontwikkeling duur voort F v Minister of Safety and Security 2010 1 SA 606 (WKK)” 2011 TSAR 135

“Effect of the destruction of a dwelling on the personal servitude of habitatio Kidson v Jimspeed Enterprises CC 2009 5 SA 246 (GNP)” 2011 THRHR 155

“Delictual liability of the police flowing from non-compliance with the Domestic Violence Act – Minister of Safety and Security v Venter” 2012 THRHR 288

“Staatsaanspreeklikheid vir opsetsdelikte van die polisie – die hoogste hof van appèl kry nogmaals bloedneus” 2012 TSAR 541

“When the law of delict and matrimonial property converge and the Constitution points the way – a recent South African case study” in Confronting the Frontiers of Family and Succession Law – Liber Amicorum Walter Pintens (2012) 1259

“Erkenning van deliktuele vordering van deelgenoot aan permanente heteroseksuele verhouding weens doodslag van ander deelgenoot” 2013 TSAR 777

“Aquaeductus en sommige gevolge van goeie buurmanskap” 2013 TSAR 561

“Vicarious liability for intentional delicts – the constitutional factor clinches liability” 2013 TSAR 348

“How safe should a sidewalk be? The evergreen question of a municipality’s liability for negligent omissions” 2013 TSAR 164

“Makulu Plastics and Packaging CC v Born Free Investments 128 (Pty) Ltd and Others 2013 1 SA 377 (GSJ)” 2013 De Jure 620

“In memoriam Robert Feenstra” 2013 THRHR i-ii

“A growing trend in source application by our courts illustrated by a recent judgment on right of way” 2013 THRHR 239

“Via simpliciter and spoliation” 2014 TSAR 151
“Delictual liability for disturbing the airwaves – The law of delict moving into the 21st century” 2014 THRHR 686

“Aquiliese aanspreeklikheid vir suiwer ekonomiese verlies – Die hoogste hof van appel draai briek aan” 2014 TSAR 826


“Middellike staatsaanspreeklikheid – mistastings oor gevestigde regsbeginsels” 2015 TSAR 623

“Delictual liability for adultery – a healthy remedy’s road to perdition” Essays in Honour of / Huldigingsbundel vir Johann Neethling (2015) 421

“Die grense van middellike staatsaanspreeklikheid vir opsetsdelikte van polisiebeamptes 2016 TSAR 332

“A decision on exclusion clauses avoided by recourse to delictual principles on wrongfulness: Deacon v Planet Fitness Holdings (Pty) Ltd 2016 2 SA 236 (GP)” 2016 THRHR 754

“Revisiting the elements of delict – the Mashongwa judgments” 2016 THRHR 551

“Purposed extension of the dependants’ action: Osman v Road Accident und 2015 6 SA 74 (GP)” 2016 JTHRHR 67

“Die aksie van afhanklikes weens die dood van hul broodwinner: Veel lawaai en weinig wol? – Seleka v Road Accident Fund 2016 4 SA 445” (GP) LitNet Akademies (Regte) Jaargang 13(3) 2016-10-25

“Damage(s): reflections on the misuse of legal terminology” 2016 SALJ 715

“Determining the wrongfulness in delict of a positive breach of a public duty” 2017 TSAR 379

“Middellike werkgewersaanspreeklikheid weens seksuele teistering deur ‘n werknemer” 2017 TSAR 630

“An unsuccessful long shot aimed at effecting liability for causing pure economic loss” 2017 THRHR 483

“A recent development regarding a company shareholder’s personal delictual claim for pure economic loss in South African law” accepted for publication in the Liber Amicorum in honour of Prof Bas Kortmann [forthcoming]

“Enkele gedagtes oor die onsekerheid van gevestigde gemeenregtelike reëls: resente voorbeelde van die hof in wetgewende rol” accepted for publication in the Liber Amicorum in honour of Prof Jean Sonnekus [forthcoming]

“Intentional delicts of police officers: A hiccup from the Supreme Court of Appeal” accepted for publication in 2017 TSAR (part 4) 109. “The precarious position of a land owner vis-à-vis unlawful occupiers: common-law remedies to the rescue?” accepted for publication in 2018 TSAR (part 1)

Translation of books

Workbook for the Law of Delict (Digma Publications 1990)
Publications


*Politokrasie* by Malan K [PULP] (2013) under the title *Politocracy*

Book reviews

"The Apportionment of Damages Amendment Act" by Boberg 1972 *De Rebus Procuratorii* 561

"Maasdorp's Institutes of South African Law" by Hall (8th ed) 1973 *De Rebus Procuratorii* 30

"Servitudes" (3rd ed by Hall, 1973) 1974 *De Jure* 73

"The Law of Privacy in South Africa" (1979) by McQuoid-Mason 1979 *De Jure* 183

"Inleidende Hoofstukken betreffende de grondslagen van het Nederlands Privaatrecht" by Feenstra R 1979 *TSAR* 273

"Geskiedenis van het Vermogensrecht – Tekstboek" (1979) by Feenstra and De Smidt 1979 *TSAR* 274


"Maior Viginti Quinque Annos: Essays in Commemoration of the Sixth Lustrum of the Institute for Legal History of the University of Utrecht" (1979) *THRHR* 453

"Repertorium Bibliographicum Institutorum et Sodalitatum Iuris Historiae" (ed Feenstra R, 1981) 1982 *THRHR* 105

"Registers op die Observationes Tumultuariae van Cornelis van Bijnkershoek en van Willem Pauw" (1982) by Van Warmelo 1982 *THRHR* 346

"Drietalige Regswoordeboek – Trilingual Legal Dictionary" (1981) by Gonin and Hiemstra 1982 *De Jure* 376

"Introduction to South African Law and Legal Theory" (2nd ed, 1980) by Hosten et al 1982 *De Jure* 401

"Bibliografie van Hoogleraren in de Rechten aan de Leidse Universiteit tot 1811" (1984) by M Ahsmann and R Feenstra 1989 *THRHR* 145

"Katalog der Bibliothek van Wolfgang Kunkel" (1988) by staff of Kyushu University, Japan 1989 *THRHR* 615


"Introduction to the Conflict of Laws" (1988) by A J E Jaffey 1989 *De Jure* 397


"Rights of Personality in Scots Law – A Comparative Perspective" (2009), Niall Whitty & Reinhardt Zimmermann (eds) 2010 *TSAR*