

APRIL 2008

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LANDLORDS – HEED THE TALE OF THE FORFEITED FARM!

The penalty for turning a “blind eye” to what others use your property for could – if your tenants turn out to be criminals - be forfeiture to the State.

A recent High Court judgment highlights the need for you to take *positive* steps to ensure that your assets aren’t used to commit crime. The law recruits you - as a property owner - into an *active* role as a guardian of your property against crime. You can’t sit back and be “supine”. You must “where reasonably possible, take steps to discourage criminal conduct” involving the use of your property.

In the case in question, the tenants of a farm were using it to manufacture mandrax. The owners weren’t shown to have in any way participated in any illegal activity - but they nevertheless had their farm forfeited to the State in terms of the Prevention of Organised Crime Act. They were unable to convince the Court that they had acted with the degree of “vigilance and care” which the law requires of owners.

The onus is very much on you there; so keep an eye on what your tenants are up to!

SURETYSHIPS SIGNED BLIND

Yet another warning not to sign documents without fully reading (and understanding) them, comes from a recent High Court judgment in which the Trustee of a Trust was held to a suretyship agreement, which he had signed without reading it.

The law is that when you sign a contract, you are “taken to be bound by the ordinary meaning and effect of the words” therein. The only exception is if the signatory is “misled as to the purport of the words to which he signified his assent by appending his signature”. It is clear from the judgement that, with banks habitually requiring suretyships for credit granted to trusts and the like, it is never going to be easy to convince a court that the bank has misled you.

PROPERTY SALE AGREEMENTS – WATCH WHAT YOU SAY (AND DO) AFTER SIGNING

Agreements for the sale of immovable property (and any later amendments) are valid only if formally reduced to writing and signed by all parties.

However, a right to cancel the sale (through breach by the other party) can be waived informally; and a cancelled sale can be revived informally. Provided, that is, that “this process does not involve the alteration of any of the material terms of the original written agreement”.

In a recent High Court judgment, the sellers cancelled a sale when the buyer failed to pay instalments due on the purchase price – but thereafter the sellers requested and/or accepted payment of several instalments, i.e. *after* the cancellation. That conduct, the Court held, amounted to a tacit agreement to revive the sale, which was therefore enforceable.

A properly drawn sale agreement is vital here; but however tightly worded it is, still be very careful what you do and say after signing it!

FREEDOM DAY AND DOUBLE PAY

Where a public holiday falls on a Sunday, the following Monday automatically becomes a public holiday. That applies this month, on Sunday 27th (Freedom Day) and Monday 28th.

In terms of a recent Labour Appeal Court judgment, both days are public holidays for the purposes of labour law.

So any employees working on those days are entitled to at least double pay for both days. An employee not working on those days is – if Sunday would normally be a working day for him/her - entitled to normal pay for both days.

The court commented: “not all employers are saddled with the burden to be borne by this particular employer. It all depends upon what one negotiates and agrees with one's employees”. So if you normally operate on Sundays, or intend to do so, make sure that your employment contracts are correctly drawn to cater for this situation.

DIVORCE DETAILS – NOW OPEN TO PUBLICATION

The prohibition against publication of the details of divorce actions, which is prescribed by the Divorce Act has (subject to confirmation by the Constitutional Court) fallen away per a recent High Court decision.

Courts can still intervene to protect the rights of children, and individual privacy where warranted, but the general, automatic protection from publication has fallen away.

BIO-PIRATES BEWARE!

Biotechnology is highly profitable, and South Africa's rich biodiversity means that our biological resources could well be as valuable to us as our mineral resources. We have as a result been the target of much foreign “bio-piracy”, which the State started addressing several years ago with the passing of the “Biodiversity Act”.

New regulations (in effect from 1 April 2008) require all new “bio-prospectors” and exporters of “indigenous biological resources” to obtain permits. Existing bio-prospectors have 6 months to apply for permits. Permits require “material transfer” or “benefit-sharing”

agreements with the State/individuals/communities who provide access to, or whose traditional knowledge is used in respect of, such resources.

Heavy penalties (fines and up to 5 years imprisonment) are provided for contraventions.

PROSPECTING RIGHTS: ARE YOURS VALID? CHECK NOW

Any holder of a prospecting right issued by a Regional Manager of DME (Department of Minerals and Energy) should urgently take advice as to its validity. The High Court has recently declared such a permit invalid on the grounds that the Regional Manager had no power to issue the right.

THE MISLEADING “EAT ALL YOU CAN” ADVERTISEMENT

Advertising cannot be misleading, nor can one in any way market products that are not available – such adverts fall foul of the Advertising Standards Authority’s Code of Advertising Practice. And attempting to get around those prohibitions by fudging the issue isn’t likely to succeed.

Thus a restaurant’s advert for “eat as much as you can for R89.90.p.p (price subject to change)” was ordered by the ASA Directorate to be withdrawn, where the actual prices charged varied from day to day, and never actually went as low as R89.90.

Neither the use of the words “subject to change”, nor subsequent telephone conversations to confirm a different pricing, did anything to save the misleading advert.

WEBSITE OF THE MONTH: TRAIN YOUR BRAIN!

Mental Exercise = Mental Agility + Creativity + Sharper Memory + Alertness.

So stay ahead of the pack! Put your grey matter through its paces with a regular on line workout.

First, warm up physically - Brain Gym® Exercises at <http://esl.about.com/od/englishlessonplans/a/braingym.htm> will show you how.

Then surf to these (free) sites: -

- Brain Metrix at www.brainmetrix.com - brain stretching, IQ booster etc.
- Sharp Brains at www.sharpbrains.com - brain teasers, advice on “brain foods”, physical exercise, stress management and more.
- Brainwaves Interactive Exercises at <http://www.brainwaves.com/puzzle-home.html> - puzzles to build mental stamina and data organization.
- Games for the Brain at www.gamesforthebrain.com - Sudoku, Chess, etc, etc
- Matica Brain Gym at <http://www.matica.com/free-flash-games/2/Brain-Gym.html>. The main site also has F1 Racing, Rugby and many other recreational games.
- Compete online with others around the world at Brain Arena at www.brainarena.com.

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