

JANUARY 2008

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SLIPPERY SHOP FLOORS – HOW MANY CLEANERS IS ENOUGH?

Shopkeepers (and shoppers) need to be aware of a further “slippery shop floor case” recently decided in the High Court.

The law doesn’t require that “every spillage must be discovered and cleaned up as soon as it occurs. Nevertheless, it does require a system which will ensure that spillages are not allowed to create potential hazards for any material length of time, and that they will be discovered, and the floor made safe, with reasonable promptitude.”

The Court analysed what would constitute an adequate cleaning system for a supermarket with a floor space of 15,000 m² and some 22 shopping aisles. It held that the supermarket’s cleaning system (one cleaner, supported by possible detection of spillages by 6 staff members) was insufficient. Accordingly a shopper, who was injured when she slipped on a spillage, was entitled to damages.

BODIES CORPORATE: THE RIGHT WAY TO RECOVER DISPUTED LEVIES

A recent Supreme Court of Appeal case makes it clear that bodies corporate seeking to recover outstanding levies from an owner may only sue in a Court where there is no dispute as to the claim, i.e.” where an owner ignores a demand for payment of levies or simply refuses, without more, to pay them”.

As soon as levies are disputed, the matter must go to arbitration. In fact all disputes between the body corporate and owners, or between owners, must go to arbitration - it is only ruled out where “an interdict or any form of urgent relief is required”, and where “an arbitrator is not competent to grant the relief sought”.

7 JANUARY DEADLINE FOR DOMESTIC WORKERS’ UIF

Don’t forget that from 1 December 2007 the minimum wages for domestic workers increased by 9.3%, to the following: -

- Where more than 27 hours are worked per week
 - In urban areas
 - R 5-98 p.h.
 - R269-11 p.w.
 - R1.166-05 p.m.
 - In rural areas
 - R4-85 p.h.
 - R218-34 p.w.
 - R946-04 p.m.

- Where 27 hours or less are worked per week
 - In urban areas
 - R7-06 p.h
 - R190-73 p.w.
 - R826-41 p.m.
 - In rural areas
 - R5-73 p.h.
 - R154-73 p.w.
 - R670-44 p.m.

You must also increase UIF deductions, and lodge new UI-19 forms, by next Monday, 7 January. Do it online at the Department of Labour UIF website www.ufiling.gov.za.

A FAIR COP? IF NOT, SUE!

Our law enforcers need – and deserve – all the support you can give them in dealing with the scourge of crime.

But the Courts have made it clear that they will not tolerate abuse of power, particularly in regard to arrest and detention.

Recently the High Court, in awarding substantial damages to a man arrested without warrant, put it this way: “the fight against crime will not be facilitated by arresting citizens who do not pose a serious threat to society and who are likely to appear at trial if summonsed. It will be won by diligent and competent police work.” Arrest cannot be used solely to “frighten or harass” anyone – its primary purpose is to bring the person before Court.

Where an arrest is effected on a warrant (issued for example for failure to appear in Court in answer to a summons), the subsequent detention will be unlawful if proper procedures (such as considering releasing the person on warning to appear in Court) are not thereafter followed.

If you are unlucky enough to be arrested for any reason, DO NOT RESIST ARREST. Do ask for reasons for the arrest, sight of any warrant issued, proof of service of the summons, and immediate access to your lawyer. And make detailed notes of everything that happens – if the arrest and/or detention are unlawful, you will have a claim for damages, and should pursue it vigorously.

THE MILLER’S TALE – REPUDIATION AND CANCELLATION

A contract can be cancelled if one party “repudiates” it.

If you are wanting to continue with a contract, be careful that you don’t do or say anything that may *seem* to be a repudiation of it – the Courts have held that repudiation is “not a matter of intention, it is a matter of perception”. Your state of mind is irrelevant; what counts is what a reasonable person in the position of the other party would *think* you intend.

Thus in a recent High Court case, a transporter was held to have repudiated his contract with a miller, where his words and conduct were clear enough to constitute repudiation – despite his insistence that repudiation was not what he intended.

WINING AND DINING - THE CORRUPTION CONSTRAINT

Be cautious when entertaining, and giving gifts to, your customers and suppliers. South Africa has far-reaching anti-corruption legislation – and in a recent High Court judgment the Court remarked that “...the practice of soliciting and maintaining customers’ goodwill with ‘gifts’ appears to constitute a criminal offence”.

In the case in question (which related to a restraint of trade dispute) it emerged that a company had regularly given gifts to, and entertained, customers and suppliers. The “gifts” comprised DVDs, alcohol, gift baskets, birthday gifts, chocolates and cakes, dinners, drinks, entertainment at sporting events etc....

Nothing hugely unusual there - nevertheless the Judge referred the matter to the Director of Public Prosecutions for investigation.

It seems that “small tokens of gratitude or generosity” could well fall under the excuse that “the law does not concern itself with trifles”, and that it was the large amounts involved in this case that drew the Court’s censure. But the principle is there, so take advice if you aren’t sure where to draw the line.

TRADE MARKS: HOW SIMILAR IS “TOO SIMILAR”?

Once you successfully register your trade name or mark, what are your rights if a rival business starts using a name or mark that is *similar* to it but not *identical*? The law prohibits use of a similar name/mark only if it so nearly resembles the registered mark “as to be likely to cause deception or confusion”.

That’s a vague (and potentially wide) test, but if a “substantial number of persons will probably be confused”, particularly on the “first impression” test, you are likely to have a case.

With an invented word, any close permutation is likely to be held to be confusingly similar. For example, a soap manufacturer was interdicted from calling its soap “Soft Luv”, the “Luv” part being held to be too close to the well-known brand “Lux”.

WEBSITES OF THE MONTH: 2008 - THROUGH A GLASS, DARKLY

Predicting the future is always going to be a case of “seeing through a glass, darkly”.

But prediction can be a hugely useful business tool, and the Web has tools to help. If for example you are trying to work out the viability of a new project – or perhaps wondering what asset classes are likely to be in favour with investors in a year or two – try tapping into the “collective wisdom” of Internet users at “social prediction” websites like ZiiTrend at www.ziitrend.com, and Predictify at www.predictify.com.

They are based on the premise that large groups of people are better at predicting the outcome of future events than small groups of experts – so you create a topic for outcome prediction, and let the web-surfing masses of the world give you an answer.

Future Scanner at <http://www.memebox.com/futurescanner> collates an array of Internet articles (future prediction, economic forecasts, new discoveries etc), and categorises them into Years and Categories. Site users then vote for their favourites; again giving you insight into what the “crowd” thinks is going to happen. And prophecies of this nature – *if based on a wide enough sample* – could well be self-fulfilling.

Extrapolating from current trends should also help the crystal ball along a bit. See locally-based Cherryflava at www.cherryflava.com for “hot new trends emerging in business, marketing, advertising and fresh thinking.

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