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*The information in this document is of a general nature and does not constitute legal advice*

## **DON'T DELAY IN CLAIMING: TIME LIMITATION CLAUSES ARE VALID**

The Constitutional Court has now finally confirmed that time limitation clauses (commonly found, for example, in short-term insurance contracts) are not unconstitutional.

In the case in question, an insurance claim was rejected, and the insured failed to sue the insurance company within the stipulated 90 days. The time period was held to be adequate and fair, and the argument that such time limits are contrary to public policy (because they limit access to the Courts) failed.

The lesson is clear – do not delay in seeking legal advice wherever there is any possibility of a time limit applying.

## **THE OPTION TO BUY CLAUSE – WORD IT PROPERLY**

As a tenant, it may be important to you to have an option to purchase in the lease, giving you the right to buy the property at a stated price. But make sure that the option clause is correctly worded, and properly implemented.

For example, if you might need to raise a bond when buying, make sure that a bond clause is provided for in the option. In a recent case, when a tenant tried to bring a bond clause into the sale only when exercising its option, the Court found that the tenant had no right to do so, and the chance to buy was lost.

## **READ OR REGRET, AND SURETYSHIP BLUES**

Another warning to read everything you sign comes in a recent judgment where a businesswoman claimed to have signed a rental agreement incorporating a personal suretyship without reading it. The Court held her to the suretyship, noting that when you sign a contract you are “taken to be bound by the ordinary meaning and effect of the words which appear over [your] signature”. If you deny being aware of such a suretyship, the onus is on you to prove accordingly.

## **USE IT OR LOSE IT**

Be careful that you don't either lose a servitude in your favour (by not using it), or lose ownership of part of your property (by allowing someone else to occupy it openly as though owner), through prescription.

Although in this case prescription is for a period of 30 years (not the 3 years that applies to most claims), it does happen. Thus in a recent High Court appeal case, adjoining property owners came to blows over a common passage forming the boundary between them.

In the end result the servitude over part of the passage survived, but one owner lost ownership of the rest of the passage to the other.

## **HOW TO LIQUIDATE A COMPANY THE EASY WAY**

Applying for the liquidation of a company (or CC) that owes you money can, in appropriate circumstances, be an effective debt collection tool. However, proving that the company is actually unable to pay its debts isn't always easy.

There is a shortcut - serve on the company at its registered office a demand for the debt. If the debt is not settled within three weeks, the company is *deemed* to be unable to pay its debts, making a liquidation application much easier to support.

But, as evidenced in a recent High Court case, if the letter of demand is in any way inadequate, mere failure by the company to pay the debt is no longer sufficient to prove inability to pay. So make sure that the demand is both correctly drawn and served, or your application is headed for failure - and that can be a very expensive exercise.

## **NEW LABELLING REQUIREMENTS FOR TEXTILE GOODS**

All textile goods must be labelled with their country of origin, and goods made from imported fabrics or textiles must be labelled accordingly. New regulations (replacing the 2005 ones), are effective from 14 April 2007, and provide severe penalties for contraventions.

## **EMPLOYERS BEWARE – A PROBATIONARY CLAUSE DOESN'T GIVE YOU CARTE BLANCHE TO DISMISS**

Employers may think that a probationary clause in a contract of employment means that the employee may simply be declared unsuitable for the job at the end of the probationary period, and dismissed.

But this is not so - a recent Bargaining Council decision points out that the Labour Relations Act "requires employers to counsel and train probationary employees before they are dismissed". There must be a valid reason for any dismissal, and normal procedures must be followed in regard to alternative remedies for poor performance, the employee's right to be heard on the matter, disciplinary hearings etc.

## **MARRIAGE AND THE DOMICILE TRAP**

If you are a South African getting married overseas (or conversely an immigrant to South Africa getting married here), be aware that your marriage will be governed by the laws, not of the country where you get married, but of the country where the husband is domiciled (i.e. has his principal permanent residence) at the time of marriage.

Be careful here – laws can vary widely from country to country, and under our law you will find yourselves married in community of property if you don't have an ante-nuptial contract. That can have a huge effect on your financial status in the event of divorce - in a recent High Court

case, Nigerian law was held to apply to the marriage of two immigrants, costing the wife a half share in a house that she assumed she owned jointly with her husband.

An immigrant can change domicile by acquiring “a fixed and deliberate intention to abandon his previous domicile, and to settle permanently in the country of choice”; but that reference to “intention” opens up all sorts of potential uncertainties.

Further uncertainty arises from doubt that the law’s exclusive reference to the domicile of the “husband” will survive in our gender equal society. And how are the Courts going to apply the concept to same-sex marriages? Who in such unions is the “husband”?

You are able to expressly contract to alter the law that will govern your marriage – avoid doubt by having a proper document drawn up to record your intentions in this regard.

## **WEBSITE OF THE MONTH: THE HAPPINESS FORMULA**

“There is no duty we so much underrate as the duty of being happy” (Robert Louis Stevenson).

Do your duty, have fun and share it with the World, by contributing to the new “Happiness Formula” wiki (website that allows visitors to edit content) inspired by Scott Adams (creator of Dilbert), at [www.happinessformula.pbwiki.com](http://www.happinessformula.pbwiki.com).

The idea is to define happiness by a formula, currently “*Happiness = health + money + social life + meaning*”, with nested formulas to further explain each component of happiness.

Thus “*Health = Sleep + PhysicalHealth + Mental Health*”, then down a further level to “*Sleep = { Schedule x Quality (%) }+ Sleep Technique*”.

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