

days for repairs. Besides replacing the defective part, the engineering firm will be liable for loss of profits and the repair or replacement of the damaged machinery. Importantly, the product liability rules apply to all customers, *regardless of turnover or net asset value*. The result is that a small business may become liable for the very significant losses suffered by a listed company. Your terms and conditions of sale need careful attention to deal with this risk.

There may be something of an escape route from the new product liability rules, but only for

retailers and distributors. If a retailer or distributor can satisfy a court that, given its position in the supply chain it could not reasonably have detected the defect, then the retailer or distributor may be able to evade liability. We do not yet have any indication of how easily a court will be convinced that a retailer or distributor has done all that is reasonably possible to weed out defective products.

The New Consumer Protection Act comes into force on 31 March 2011.

## the new batch

*I never let my schooling interfere with my education.*  
- Mark Twain

We are pleased to welcome a promising crop of candidate attorneys this year ...

**Craig Blackmore** attended school and university in Pietermaritzburg. Craig enjoys playing hockey in the winter for the varsity hockey club and is an avid rock and surf angler. Craig spends as much time as possible on the KwaZulu-Natal south coast, and also enjoys the Transkei and Mozambique.

Craig worked as a bar tender and in his father's contracting business while studying. Craig would often organize a painting crew before heading off for lectures in the morning.

**Kirsch Bezuidenhout** is also a Maritzburg



Craig Blackmore



Kirsch Bezuidenhout

boy and obtained his matric from Alexandra High School with colours.

Kirsch's hobbies include playing cricket umpire from the couch and jogging. Craig is also a musician and plays the guitar, bass guitar and the piano. In his younger days he rocked with the band, *The Chiopractic Junkies*.

**Michelle Green** attended Westville Girls' High School and completed her LLB and an LLM in Business Law at the University of KwaZulu-Natal (Howard College Campus).

Michelle loves traveling and has been to the United Arab Emirates, the United Kingdom, Botswana, Malawi, Mozambique and

Swaziland to name a few. She also enjoys scrapbooking and worked in a scrapbooking shop as a student, teaching children's scrapbooking classes during the holidays. Intriguingly, she enjoys throwing elaborate English tea parties and themed dinner parties, the latest apparently being a Mad Hatter's party!

**Zama Sokhela** is from Vryheid and obtained her LLB at the University of KwaZulu-Natal, Pietermaritzburg campus.



Michelle Green



Zama Sokhela

Zama enjoys exercising, especially aerobics, because of its ability to clear the mind. The Venn Nemeth and Hart team has also introduced her to the wonderful sport of cricket and she is now hooked on the game!

As a student, Zama worked as a court interpreter and as an administrative assistant for the Department of Education. Zama was introduced to the law by her father, who is a magistrate. Zama describes her mother, a matron at Vryheid hospital, as her inspiration.

## ALIVE

*It takes a village to raise a child.*  
- African Proverb

In 2009 Tich and Joan Smith founded Lungisisa Indlela Village (or LIV) on an 83-acre farm near Verulam, KwaZulu-Natal.

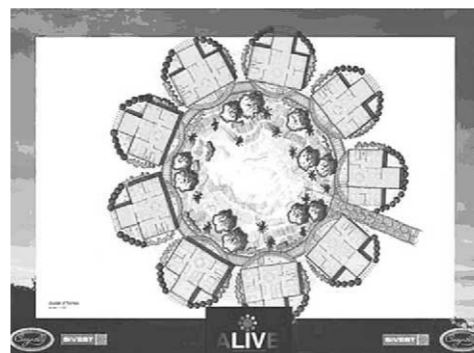
LIV arose in response to the increasing number of children being abandoned or orphaned as a result of HIV/AIDS and poverty. *Lungisisa indlela* means 'the right way' and the aim is to give children a family environment in which they will receive unconditional love, spiritual discipleship, care and nurturing. In short, where they will know that they have a Father in heaven and will have a chance to grow up 'the right way'.

The first LIV village will comprise 100 homes - each with a foster mother and six orphans - built around a church and with schools to cater for children from crèche to matric.

LIV wants to grow our next generation of leaders and the plan is to see many LIV villages springing up across South Africa.

LIV aims at sustainability through the acquisition of viable farms and businesses using donor funds. Venn Nemeth and Hart has been privileged to assist LIV with the legal work required to acquire its first business - a fresh flower farm. We hope that LIV will blossom!

LIV's website can be found at [www.liv-village.com](http://www.liv-village.com) and contacted on 031 562 9986.



Layout of the LIV village

# LAW LETTER

Supplement

February 2011

vennemeth&hart  
ATTORNEYS

# coffee with yuri

Yuri Maharaj has played many sports but interestingly, he has found that it is martial arts that have best prepared him for his professional life as a litigator. We found out more about Yuri over a cup of coffee ...

## I handle a lot of property disputes.

Many of these disputes relate to the eviction of non-paying tenants from residential or commercial properties, as well as the eviction of labour tenants and occupiers from farming properties. It is important to apply the right procedure when evicting a tenant; an incorrect procedural step can get you thrown out of court. This is often a challenge because the legislation is difficult to understand and there are relatively few court judgments to provide guidance.

## I like helping owners recuperate from non-paying tenants.

A non-paying tenant is obviously a nightmare for any landlord as this has significant implications for cash flow. I find it very satisfying when I am able to help an owner to recover a property and place a paying tenant.

## Property disputes often throw up unusual and interesting situations.

We are presently applying for a court order against a farm tenant who has persisted in burying deceased relatives on a farm, despite a previous court order which we obtained. The situation is interesting because farm labourers are generally entitled to bury their deceased relatives on farms, given their relative inability to travel to municipal cemeteries. However, in this case, the burials were affecting the water table and



Yuri Maharaj  
Litigation Division

we were able to obtain a judgment in our favour on environmental grounds.

## I also do a lot of banking and foreclosure work.

This work is interesting because we have to ensure that there has been compliance with the National Credit Act before proceeding with legal action. This Act is also difficult to interpret and requires some clear thinking!

## The main issue with evictions and foreclosures is time.

Once we have instructions, we have to pursue these matters vigorously. Our goal for our clients - whether landlords or the banks - is to place them in possession of their properties as soon as possible, so that they can earn an income stream again. This can make work intense at times.

## Martial arts has really helped my work.

I train in *Jeet Kune Do*, which was practised by Bruce Lee, as well as a Phillipino martial arts called *Bahad Zu' bu*. One important result of martial arts training is the ability to focus. With the discipline of martial arts, I find it easier to focus on the matter at hand, easier to avoid becoming stressed by work pressure. I find that I can ride out the shocks and surprises that are a normal part of litigating.

## I initially thought I would go into

**drama.** They say that litigators are frustrated actors, so I suppose that it makes sense! I made the decision to study law at the last minute, and although it seemed like

an impulsive decision at the time, it has become increasingly clear that it was the right one.

# pet hate

*A man has complained to a pet-shop owner and has been told that his recently-acquired parrot is 'just pining':*

*It's not pining, it's passed on. This parrot is no more. It's ceased to be. It's expired. It's gone to meet its maker. This is a late parrot. It's a stiff. Bereft of life, it rests in peace. It would be pushing up daisies if you hadn't nailed it to the perch. It's rung down the curtain and joined the choir invisible. It is an ex-parrot.*

*- Monty Python, The Parrot Sketch*

We were consulted by a disgruntled client who owns a luxurious home in an upmarket suburban area in the Midlands. Our client's neighbour had built aviaries which housed some eight hundred parrots.

Anyone who has lived next door to but a single parrot will understand why our client was unhappy.

A demand that the parrots, or at least the noisy ones, be removed, was met with the response that the parrots were domestic pets and that the breeding of parrots was simply a hobby. Our client was, according to the neighbour, being unreasonable and over-sensitive.

Summons was issued, a plea was entered, experts in noise measurement were consulted, and the matter came to trial. The judge was invited to see (or perhaps hear) for himself by attending an inspection-in-loco at our client's home. He declined, curtly informing our counsel that "*You may call as many witnesses as you choose but I will not*

*be one of them*".

So our client gave evidence of sleepless dawns and rapidly-developing depression. Our client's wife told the court that she thought on one occasion that her 3 year old child was being strangled, such was the din. Then a professor of acoustics ventured the opinion that the cacophony produced by the birds was significantly beyond acceptable ambient levels.

None of this seemed to impress the judge who, we suspect, was himself rather hard of hearing.

The witness who did the trick, however, was a genuine breeder of parrots. When asked by the judge to try to describe the noise made by the marvelously-named 'Hyacinth Macaw', he said that it was like a train driving into one ear and blowing its whistle before exiting from the other ear!

An interdict was granted.



Pat Dewes  
Litigation Division

# the consumer protection act: should I be concerned?

*On anxiety and fear: I get goose pimples.  
Even my goose pimples get goose pimples.  
- From the 1939 film, "The Cat and the Canary"*

There are two answers to the question: Do I need to do anything about the new Consumer Protection Act?

The short answer is: If you're *in business*, you need to take steps. The Act will affect almost every aspect of your operations.

The long answer is, as might be expected, a bit more complicated. Essentially, the Act applies to you if you are a 'supplier' providing goods or services to 'consumers'.

The Act defines 'suppliers' broadly to include the entire supply chain, from farmers and manufacturers, to importers, distributors and retailers. The franchise industry is specifically included, and the Act also applies to such diverse industries such as property development, hospitality and catering, and logistics and transport. Service providers - such as estate agents and health practitioners - are included, as are public sector entities that provide services to consumers.

'Consumers', on the other hand, include all individuals, as well as companies, close corporations, trusts and partnerships with an annual turnover (or net asset value) of less than R3 000 000.

So the long answer is: the Consumer Protection Act will impact your business if you are a 'supplier' who provides goods and services to 'consumers' in the ordinary course of business, in return for payment.

What happens if you don't review your business practices, your terms and conditions of sale and your other consumer documents to

be in line with the Act? At the level of general compliance, your business will be vulnerable to fines (not exceeding R1 000 000 or 10% of turnover) and reputational risk. Other impacts include finding that certain transactions are unenforceable, leaving you without a remedy to recover from a consumer, while in some situations you may be required to allow consumers to return goods.

These penalties may be sufficient motivation to make the necessary changes, but the product liability provisions of the new Consumer Act have taken business risk to an entirely new level. Section 61 of the Act has radically changed our law by providing that the *entire supply chain is strictly liable for consequential damages* arising from any injury, damage or loss suffered as a result of a defective product. This means that aggrieved consumers may proceed against *anyone* in the supply chain, not just against the manufacturer. It is also not necessary to prove that that a supplier was negligent in producing the defective product - it is enough that someone was hurt or suffered loss as a result of a defect. What's more the damages claimable have increased exponentially, because consumers may now claim compensation for losses suffered as a consequence of the defect.

Imagine that a small engineering firm undertakes to machine a part that is to be used in a large smelter. The part is installed, but fails within a few weeks as a result of a defect. This causes damage to some expensive machinery and the smelter has to be closed for several



Tim Brown  
Commercial Division