

when is a **wild animal** not a wild animal?

Four legs good, two legs bad.
- George Orwell, *Animal Farm*

By the use of the description "wild" in relation to an animal, it is quite obvious that we accept as a matter of fact - and law that a person cannot be held responsible for the actions of a wild animal, even if he or she is the "owner".

The legal position of our domesticated animals - such as dogs, cats, cattle and sheep - is, for the most part, different, but need not concern us here.

One of the world's leading owners and operators of luxury bush lodges and boutique hotels has a lodge in the eastern part of South Africa. An elderly woman was attacked and killed one night by a group of three lionesses whilst on her way from the *boma* (the outdoor living area) to her room to collect a jersey.

The lodge management was charged with, and convicted of, wrongfully, causing the victim's death. In our law, this is called "culpable homicide".

A fine of R20 000 was imposed and the lodge management having initially prepared an appeal against the conviction and sentence, decided to admit guilt and pay the fine.

This set of facts begs the question: how could the lodge management possibly be responsible for the actions of these lionesses, who are quite obviously "wild" animals in the wildest sense of the word?

The answer lies in the legal expression *novus actus interveniens* - literally, a new action intervening. These particular lions were born

and raised in a zoo. They were acquired by the owners of the lodge who appreciated, being experienced in such matters, that the

animals could not merely be released into the wild to fend for themselves.

What was required was a period of "training" of slowly and methodically reducing the feeding of the lions whilst making their natural prey available to be hunted in a controlled environment. The lodge management would then assess, as the days, weeks and months passed, when the lions were ready for release.

This process was duly followed and in due course it was decided that the animals were able to go it alone. The tragic events which followed proved that this decision was wrong.

Not only were the animals not skilled enough (or too lazy perhaps?) to catch their own prey but, having grown up in the presence of humans, the lions did not possess the instinctive caution which results in "wild" animals of all types avoiding contact with humans wherever possible.

The result of all this is that the lodge management had created the situation where the lions acted contrary to their natural instincts, and having done so, the management were guilty of the crime of culpable homicide.



Pat Dewes
Litigation Division

a **long** road

Johnson observed that "he did not care to speak ill of any man behind his back, but he believed that the gentleman was an attorney".
- Samuel Johnson

Two of our candidate attorneys - Kashi Rampararat and Avi Dursen - were recently admitted as attorneys in the High Court, Pietermaritzburg. This involves the candidate appearing in court for the judges to consider his or her application for admission. Incidentally, admissions used to be quick and very business-like, leaving friends and family wondering exactly what happened. Happily, the judges now take the time to remind candidates of their obligations as members of the legal profession and to congratulate them, and their friends and family, on their achievement.



Kashi Rampararat



Avi Dursen

As a farm girl growing up on the North Coast, Kashi wanted to become a pharmacist, but at the

last moment, changed her mind and registered for an LLB through the University of KwaZulu-Natal, Howard College. She found that the change paid dividends - Kashi has enjoyed her legal career to date and will be focusing on corporate insurance claims in our Litigation Division.

Avi went to Maritzburg College and obtained a Bachelor of Social Science and a Bachelor of Laws from the Pietermaritzburg campus. He attended the Practical Legal Training School and has served one year's articles of clerkship at our firm. Avi recently married Annalee, a dietician, and she is keeping him healthy and fit! Avi will be specializing in foreclosures.

vennnemeth&hart
ATTORNEYS

281 Pietermaritz Street • PO Box 600, Pietermaritzburg, 3200

Tel: 033 355 3100 • Fax: 033 394 1947

LAW
LETTER

Supplement

March 2010

vennnemeth&hart
ATTORNEYS

services directory

Chairman
Matthew Francis

Chief Executive Officer
Redvers Lee

Agency Conveyancing
Leanne Holder
Redvers Lee

Banking Law & Foreclosures
Lindy le Roux
Avinesh Dursen
Pat Dewes
Robert Stuart-Hill

Constitutional
Matthew Francis
Pat Dewes
Tim Brown

Conveyancing & Sectional Title
Lindy le Roux
Nosipo Mgojo
Redvers Lee

Corporate & Commercial
Bob Williams
John Wallace
Matthew Francis
Simon Francis
Tim Brown

Criminal
Deon Schaup
Yuri Maharaj

Debt Recoveries
Anthony Grant
Dudu Dlamini
Garnet Venn
Hellen Dolphin
Hendrika Forrester
Jayshre Bagwandeen
Jeanne Smith
Louise David
Maureen Krog

Mohammed Motala
Michael Swanepoel
Ronitha Sarupen
Vellie Radebe

Estates Administration
Ansley le Roux
Hannah Szudrawski
John Wallace

Environmental
Matthew Francis

Family
Deon Schaup
Liza Bagley
Pat Dewes

Farm Sales & Agricultural
Simon Francis

Immigration
Matthew Francis
Yuri Maharaj

Information Technology
John Wallace
Tim Brown

Insolvency
Anthony Grant
Michael Swanepoel
Mohammed Motala
Pat Dewes
Rob Stuart-Hill

Insurance
Deon Schaup
Kashi Rampararat
Nagesh Maharaj
Pat Dewes
Yuri Maharaj

Labour Law and Industrial Relations
Matthew Francis
Tim Brown

Liquor Law

Tim Brown

Litigation & Alternative Dispute Resolution

Anthony Grant
Deon Schaup
Kashi Rampararat
Liza Bagley
Nagesh Maharaj
Pat Dewes
Robert Stuart-Hill
Yuri Maharaj

Mass Housing
Nosipo Mgojo

Medical
Deon Schaup
Pat Dewes

Mortgage Loans & Investments
John Wallace
Simon Francis

Personal Injuries
Deon Schaup
Nagesh Maharaj

Property Development & Town Planning
Guy Smith
Matthew Francis
Tim Brown

Public & Local Government
Hiresen Govender
Matthew Francis
Tim Brown

Tax Planning
Bob Williams
Hannah Szudrawski
John Wallace
Simon Francis

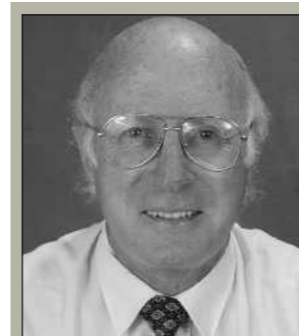
Trusts & Wills
Bob Williams
Hannah Szudrawski

coffee with bob

Bob Williams is many things - a professor of law, the author of many significant legal textbooks and articles, and a long-time consultant in corporate, tax and trust law. Bob is fairly unique in that his relish for legal theory is matched by his enjoyment in the practical application of legal principles to clients' problems. We found out more about this multi-faceted lawyer over a cup of coffee ...

I like commercial law because it allows for highly creative problem solving. Clients come to you with a problem and there are no clear-cut, obvious answers. Complex analysis throws up a range of options. The merits and demerits of each option need to be critically assessed and a recommendation made. Unlike attorneys litigating over a car accident, you are unconstrained by the facts; by who jumped which red robot. You can, to a large extent, *create* your own facts by structuring transactions in a way that supports your client's strategy.

In 1978 things looked bleak for South Africa and I left for Australia. I had, by that time, served articles in Cape Town and been a partner at Edward Nathan and Friedland in Johannesburg for five years. I lectured and consulted in Australia and Hong Kong for ten years, but by 1988 things were changing in South Africa and I decided to come back. I was offered a professional post at the University of Natal, as it then was. I have now retired from full-time lecturing and consult with Venn Nemeth and Hart, but I still lecture company law and tax courses at the University.



Bob Williams
Commercial Division

Staying on the cutting edge of new case law is very rewarding. I enjoy reading the law reports, which record significant judgements made by our courts each month. Much of my work involves tracking the development of our law, as the courts develop and extend legal principles to deal with new circumstances.

My writing career began during my LLB when I submitted an essay for an inter-varsity writing competition. I wrote on *pacta successoria* - a particularly dusty area of law dealing with agreements to bequeath one's estate to a particular person - but it got me published. I was soon submitting articles to legal journals and have not stopped since. I suppose that what I really enjoy about writing is the opportunity to organise a complex area of the law by suggesting which legal principles should apply.

The practical application of theory is important to me. I have always had a consulting practice - the University encourages consulting so that academics can add a practical edge to their research and lecturing. So re-entering formal legal practice at Venn Nemeth and Hart has, in a sense, been an extension of a long-standing interest - the practical application of the theory with which I have been working for more than thirty years.

in the dead of night

*The louder he talked of his honour,
the faster we counted our spoons.*
- Ralph Waldo Emerson



Anthony Grant
Debt Collections Division

An Anton Piller order is a special order that authorises the search and seizure of documents. It is used to prevent the destruction of incriminating evidence - particularly in cases of copyright and competition law - and is obtained from the court in secret, without the other side being informed. Its name is derived from an English case involving a certain Mr Anton Piller, who has unwittingly become a part of legal history.

A party wanting an Anton Piller order approaches a judge in chambers without notifying the other side. If the judge is satisfied that the order is warranted, the party will be given the 'go ahead' to get the sheriff of the High Court to raid the other side's premises by surprise.

When you have an Anton Piller order in your pocket, you are looking for the proverbial smoking gun that will justify what is, at face value, a gross invasion of the other side's right to privacy and the usual rules of fairness. Woe betide the litigant who fails to find the smoking gun - he will be punished with a costs order and will be vulnerable to a claim for damages!

The law reports and media are replete with cases involving well-known business people who have either initiated or been on the receiving end of an Anton Piller order. Cases that spring to mind include the late Brett Kebble in his dispute with Durban Roodeport Deep Gold Mine. Kebble's Anton Piller order was subsequently dismissed because he did not disclose to the court that there was pre-

existing litigation between himself and Durban Roodepoort. Neither did he manage to find the smoking gun that he was looking for.

Another case is Internet Solutions, who succeeded with their Anton Piller order against a competitor, Verizon. An employee filleted confidential documentation from Internet Solutions and was welcomed with open arms by Verizon. The documents were found at Verizon pursuant to an Anton Piller raid and Verizon were ordered to pay Internet Solution's costs.

We have a case pending in the Grahamstown High Court involving our client, Truda Snacks and a competitor in the Eastern Cape, Elzea Snacks. Following an early morning Anton Piller raid at the premises of Elzea, confidential business documentation belonging to our client was found. These included bank statements, management accounts and tax returns that had been stolen from our client by a private detective agency employed by Elzea. The documents seized form the basis of a damages claim that is going to trial in Grahamstown in April this year. Without the element of surprise and the secrecy involved in obtaining an Anton Piller order, the stolen documents would have never been found and our client would not have been in a position to protect its rights.

Watch this space for further developments.