

mistreating miss trust!

It's rather like sending your opening batsman to the crease only for them to find the moment that the first balls are bowled that their bats have been broken before the game by the team captain.

- Geoffrey Howe



John Wallace
Commercial Division

This is an article about yet another common form of abuse, which, as a consultant in family and business financial planning, I frequently come across the mistreatment of Trusts.

The problem most often begins with a lack of understanding of how a Trust deserves to be treated and ends with the Trust being taken for granted, abused and exposed. There have been several recent court cases which confirm that the courts will not tolerate situations where Trusts are abused by Trustees / Beneficiaries who use them as their "alter egos" simply to defeat creditors or evade taxes. And so it should be!

A Trust is a very special instrument that is capable of delivering wonderful financial benefits for families over many generations. Some of its talents include:

- Preservation of asset ownership through "perpetual" succession;
- Protection from prodigal tendencies among heirs;
- Providing a "nest egg" for building wealth over time for retirement or succession planning;
- Reducing the impact of Taxation particularly Estate Duties.

However these and the many other advantages of Trusts are squandered when those who have them don't recognise that a Trust:

- Is an entity entirely separate from its

administrators
[the Trustees]
and its beneficiaries;

- Cannot be controlled by any person for his own benefit or for the benefit of his estate;
- Must be administered properly despite the lack of statutory formalities.

To make the point let me give you a hypothetical example. A Trust owns several assets the transactions for which [rental / interest income etc] are banked by the planner into his personal bank account [the Trust does not have its own bank account even though required to by law]. The planner's co-trustees have never held a formal meeting, they simply sign whatever they are sent and can't remember when they last saw any Annual Financial Statements. Distributions among beneficiaries are made at the whim of the planner [from his own bank account of course] and then "written" to the "books" of the trust long after its year-end. The planner's business fails and his creditors are after him. They, along with SA Revenue Services, will have a field day in picking the trust to pieces and salvaging its assets to satisfy their claims. The trust was nothing more than the "alter ego" of the planner.

If you have a Trust treat it properly, give it the attention it deserves and seek guidance if you are not sure how to fulfill your duties as a Trustee.

the *kraazi* boys

In proposing a toast: To the family - that dear octopus from whose tentacles we never quite escape nor, in our inner-most hearts, ever quite wish to.
- Dodie Smith



Rob Stuart-Hill (the handsome fellow on the left in the accompanying picture) recently spent a week skiing in St Anton, Austria. The trip was organised and sponsored by Rob's brother, Laurence, as a reunion for Rob and his four brothers.

Stuart-Hills descended on St Anton from across the world - England, Australia, Namibia and South Africa.

And St Anton's is reputed to have issued

emergency orders to replenish its supplies of *gluvine* and other liquors.

Rob and Greg Stuart-Hill initially spent some time on the practice slopes with a long-suffering instructor. The instructor, in classic Austrian accent, dubbed the brothers "ze kraazi boys from South Africa" and released them onto the mountain.

... Rob returned home with great memories and a cracked rib.

a new associate

Will someone please tell me why public relations people are almost invariably 'associates'? Whom do they associate with and who can stand it?
- George Dixon



We are pleased to announce that, following a meteoric rise, Hiresen Govender has been appointed as an associate. Hiresen joined Venn Nemeth & Hart as a candidate attorney in 2007 and was admitted as a practising attorney in February 2009.

Hiresen is a relentlessly hard worker and has surprising skills in electronics. He has worked part time in his father's Phillips service centre since standard six. He loves

cars and recently fulfilled a long-standing ambition to drive a Ferrari 360 Modena around a Formula 1 race track.

Hiresen earned his LLB from the University of KwaZulu-Natal, Durban and schooled at Pinetown Boys High.

Hiresen focuses on litigation, particularly in the public sector environment.

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LETTER

Supplement
May 2009

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coffee with matthew

Matthew seems almost professorial, but he is anything but a bookish academic. He positively shines in the application of legal and other theoretical knowledge to practical situations. We found out more about Matthew's practice in land law, procurement and public sector law.

I enjoy dealing with situations that draw on a range of skills. Local government work is very rewarding in this regard you need a broad legal knowledge and the ability to analyse political situations. I did a Masters in political science and this has always stood me in good stead. Local government work is often about treading a tightrope. I recently addressed a municipal council on a forensic report prepared on the instruction of the provincial Minister of Local Government. The report required extensive legal analysis, but I also had to get the job done without offending the various political parties and the minister.

I have chaired the KwaZulu-Natal Tender Appeals Board since December 2001. KwaZulu-Natal is the only province to have established a procurement appeals process and South Africa is one of only a few countries in the world to provide a framework for procurement in its constitution. It has been very enjoyable helping to flesh out the constitutional principles through the judgements of the Tender Appeals Board.



Matthew Francis
Chairman

I have travelled a strange path. At school, I thought that I wanted to be an astrophysicist, although I could hardly spell the word! This was short-lived because my apartheid-era school was not able to offer physics. After school I considered a BComm, but as a so-called coloured person I was obliged to attend the University of the Western Cape. The thought of taking business subjects in Afrikaans was just too daunting. This proved to be a mercy because I settled on politics and really enjoyed the work. I was offered a Fulbright scholarship, but due to circumstances beyond my control could not take it up at the time, and I ended up in Manchester in the United Kingdom. I found the weather impossible to tolerate and headed back home, realizing that I needed to get a job pretty soon. The opportunities in political science were limited to journalism and lecturing, which did not appeal, so I tried for a scholarship in law and have not looked back since.

Chairing the board of directors of Venn Nemeth & Hart is a sobering challenge.

We have 13 very capable and independent-minded directors. We often have differing views on issues, but one of the strengths of the firm is that we are able to survive frank

discussion, with friendships and mutual respect still intact.

A formative experience was attending the Grahamstown festival as a schoolboy. I remember kids jumping off the bus on arrival and crowding into a local sweet

a good excuse

*On reaching the age of 100:
If I had known that I was going to live this long, I would have taken better care of myself.
- Eubie Blake*

My client was the widow of an elderly man who had died in a car collision at a busy, robot-controlled intersection in Pietermaritzburg.

Both vehicles were badly damaged and the other driver sued the gentleman's estate. The question of the degree of fault of the respective drivers arose.

The problem was that the gentleman was deceased and was naturally - at least according to the other driver - entirely at fault. It was alleged that my client's husband had driven straight through a red light. A further complication was that the only passenger had been the gentleman's 5-year-old granddaughter - not an ideal witness.

Now, the plot thickens because the deceased had an insurance policy on his life. This policy contained a 'collision clause' that provided for an additional payout if the deceased were to die as a result of a motor vehicle accident.

"Quite simple" we said when we advised our client on the policy, "He clearly died as a result of this incident".

shop. Typically, I gravitated towards the library, only to be told that it was "whites only". We have come a very long way as a country and I am looking forward to making a contribution to the future of the country through the practice of law.

"Not so," said the life insurance company, "What if his heart had stopped before the car entered the intersection? What if the reason for the collision was that the driver was already dead?"

This raised interesting possibilities. My client would not collect on the collision clause in the life policy, but at the same time the estate would not be liable for the damage to the other car. For how could the gentleman have been negligent if he were already dead?

So what to do? In the end, a witness came to light who testified that he saw the deceased slumped over the steering wheel *before* the vehicle entered the intersection. This meant that the widow did not collect the extra payout but she was happily not liable for the damage to the other vehicle.

The good news and the bad news perhaps?



Pat Dewes
Litigation Division