

give credit . . . where credit is due

*"I feel these days like a flamingo. No matter which way I turn,
there is always a very large bill."
- Joseph O'Connor, on indebtedness*



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The National Credit Act aims to protect consumers and to stem the flow of reckless credit granting, but its consequences for creditors may be severe. A debtor may apply to be declared over-indebted and to have his or her payment obligations restructured. Creditors may also find a debt reduced or even extinguished if a court concludes that credit was granted recklessly.

The result is that it is not inconceivable for a business owner to receive a letter along the following lines:

Dear Sir / Madam

I acknowledge receipt of your letter dated 7 September 2008, in which for the 3rd time you request that I pay the monies owed to you.

I first want you to know that by no means do I dispute my debt. However, I would like to bring to your attention that you are not my only creditor. I have many more creditors, quite as honourable and important as you, and whom I wish to pay too. That is why I throw all the names of my creditors into a hat and draw one randomly. The one drawn is paid immediately.

where there's a will . . .

*"I don't want to achieve immortality through my work . . .
I want to achieve it through not dying." - Woody Allen*

Venn Nemeth and Hart recently participated in National Wills Week, an initiative of the Law Society of South Africa.

I hope that your name will come up shortly.

Your Debtor.

PS: I regret to inform you that due to the harsh and threatening tone of your last letter, you will not be taking part in next month's draw. I also have a sneaking suspicion that you were reckless in granting me credit in the first place and I will be discussing these concerns with a debt counselor.

Credit checks are becoming vitally important. A responsible creditor will obtain a credit check to determine whether it would be reckless to grant a particular customer credit. But more fundamentally, credit checks are essential for deciding whether you want to do business with a potential customer in the first place. With recent reports that more than 6 million individuals and businesses are blacklisted with credit bureaux, creditors need to be selective.

Our in-house tracing department can provide you with answers within minutes at a reasonable cost.

consequences of dying intestate, including the fact that one's estate may be effectively frozen for years.

Wills also provide clarity on your intentions and reduce the potential for conflict, making things easier for your family at a difficult time.

We were delighted to prepare 36 basic wills for members of the public, free of charge.

lawyers under construction

*"The dictionary is the only place where success comes before work."
- Arthur Brisbane*

St Francis College in Marianhill boasts significant academic achievement over the years and an illustrious group of alumni, including the late Steve Biko. Grade 12

learners who are considering careers in law recently spent time at our offices to get a taste for daily life as an attorney.



The learners visited the magistrates court, the criminal court and the high court, and even found time to drop in at the Deeds Office. Our candidate attorneys then offered some frank views on the profession and the day ended off with lunch with our directors.

St Francis College students with VNH delegates.

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LAW LETTER

Supplement October 2008

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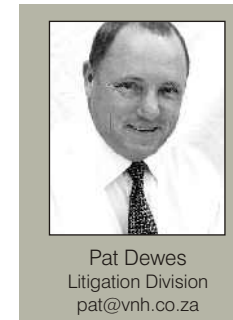
Tax Planning

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Trusts & Wills

Bob Williams
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coffee with pat



Pat Dewes is an avid fan of the TV series *Boston Legal*. He feels that the director has got courtroom drama just right, but perhaps stretches the glamor of our profession rather thin. Over a cup of coffee we found out what Pat's career as a litigator means to him ...

You won't find any best selling novels on conveyancing. I'm flinching at the reaction of my conveyancing colleagues, but that is the bottom line. Conveyancing is important, but litigation can be a pure adrenaline rush. After all, authors like John Grisham make fortunes writing about *litigation* attorneys, not conveyancers.

One of the rewards is variety. If you look through my filing cabinets you'll find files dealing with anything from diseased potatoes, to provincial boundaries, medical negligence and plantation fires. As a litigator, you have to develop a working knowledge of your subject matter - you're always learning something new.

I'm not a good loser. This can be a bit tedious on the golf course, but it is important for my work. I like the fact that clients entrust their problems to me with a view to producing a positive result. Victory is important.

A milestone was winning a significant damages claim for a KFC franchisee.

Our client owned the most successful Kentucky Fried Chicken outlet in South Africa, which was listed amongst the top 100 KFC outlets worldwide. We instituted legal action when a municipality constructed a tunnel along our client's road frontage and sales dropped dramatically. The matter went all the way to the Appellate Division. I received the judgement by fax at nine in the morning and went round to my client's offices, unannounced, with a bottle of champagne. No further litigating was done that day!

Courts are fascinating places. There's the human drama that inevitably surrounds conflict, not to mention suspense as to the outcome. Ritual also plays a role. It may seem archaic, but ritual is important because it influences behaviour and attitudes. A magistrate or judge, for example, is always seated on a platform, above the lawyers, the litigants and everyone else in the courtroom. This encourages a respect for the court, regardless of how you may feel about a particular judgement.

Joining Venn Nemeth and Hart has been like coming home. I have spent my career to date in another Maritzburg law firm, where I was chairman of the board. The irony is that two partners from Venn Nemeth and

Hart offered me a conveyancing position while I was completing my articles. I declined because I did not want to be a conveyancer.

Litigation isn't *Boston Legal*. But I do think that litigators have got the best part of the job. And, surprisingly, I still think that when I am preparing for a court hearing in the early hours of the morning ...

structuring deals for tax efficiency



This is too difficult for a mathematician. It takes a philosopher.

- Albert Einstein, on filling out his income tax return



Bob Williams
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Our law reports often feature successful business deals that have turned into tax disasters. When you read the court's judgements in these matters, a common thread emerges. In the excitement of the deal, no one paused to ask - *what are the tax consequences of all this?*

Whenever money or property changes hands, there is a tax dimension. Fundamental questions must be asked before the contract is signed. Is the payee taxable on what was received? Is the payer entitled to a tax deduction for the expenditure outlaid? And of course the over-arching question - could this deal be done in a different way to achieve a better tax result? If these questions are not asked before the deal has been done, and cannot be undone, adverse - sometimes catastrophic - tax consequences may come to light.

It is also worth remembering that there can be tax consequences even where no money or property changes hands. Income tax or capital gains tax may, for example, be

payable where an interest-free loan is made, a debt is waived or a contract is cancelled.

Tax law can be pedantic and legalistic. Take the elementary question - in what tax year must I claim a deduction for an item of business expenditure? A lot of money can turn on the answer. A tax deduction of R100 000 is far more valuable if I can claim it this year, than if I have to wait until next year or the year after. The Income Tax Act, as interpreted by our courts, provides that tax-deductible expenditure must be claimed in the year in which the taxpayer came under a legal obligation to incur the expense, generally in terms of a contract. An attorney who is skilled in contract drafting and knowledgeable in tax law can prepare a contract in such a way that the legal obligation arises in the year that is most advantageous for his client.

In short, no one should commit to any kind of business transaction without taking professional advice on the tax consequences of the transaction.