

school fees workshop

For every person who wants to teach there are approximately thirty who don't want to learn - much.
- WC Sellar

School principals, bursars, senior staff and governing body members recently attended a Venn Nemeth and Hart workshop aimed at assisting schools to recover outstanding school fees.

The South African Schools Act allows schools to take legal action to recover outstanding fees, but our courts will not grant an order unless the school can show compliance with the provisions of the Act. In the case of the *Centre for Applied Legal Studies v Hunt Road Secondary School*, the court refused to order parents to pay fees because the school could not prove that it had complied with

one of the act's requirements. In this case, the school should have invited parents to apply for exemption and then give written notice to those parents who had not done so, that they would be handed over if payment is not received within 3 months.

The workshop focused on understanding the requirements of the South African Schools Act and overcoming practical problems in giving effect to these requirements.



Mohammed Motala
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for a three-step process for weeding out claims. The Minister of Transport will publish a list of "non-serious injuries". You do not get any cover from the Fund if you are unfortunate enough to have your injury appear on this list. If you pass this first stage, a medical practitioner will have to confirm that you suffer at least 30% whole body impairment. These concepts are still to be tested in court, but it may be that a fractured pelvis, while assessed as serious in relation to the legs, is deemed to represent less than 30% impairment when taking the whole body into account. The claims of those assessed as having less than 30% whole body impairment will fail unless the medical practitioner can confirm that the injury has resulted in a serious long term impairment or loss of body function; a

severe long term behavioural disturbance or mental disorder; the loss of a foetus or permanent serious disfigurement. Many injuries, including whip lash, fall outside these categories. Having cleared these hurdles, successful claimants (if 'successful' is the correct word) will then be in a position to lodge a claim.

Another limitation is in respect of claims for loss of earnings. The Fund's liability is now restricted to R160 000 per year, irrespective of the actual earnings lost. Tokoyo Sexwale's claim for loss of earnings, for example, will be the same as yours or mine. This limitation is subject to a quarterly adjustment to counter the effect of inflation and, as at July 2009, the amount has been adjusted to R172 806 per year.

down with the dress code!

People must not do things for fun. We are not here for fun. There is no reference to fun in any Act of Parliament.
- A.P. Herbert in the novel *Uncommon Law*.

Casual Day was celebrated for the 14th consecutive year this September. This year's theme was Show Your True Colours and, as usual, Venn Nemeth and Hart got into the spirit of things. Springbok, Sharks and Bafana jerseys vied for place in the corridors. Garnet Venn, one of the firm's founders, proudly wore his number 80 Sharks shirt, which was presented to him by his family on his 80th birthday. Casual Day has, at the time of printing, raised R5 505 421 for disabled people through Casual Day 2009.



raw deal for road users

I detest life-insurance agents; they always argue that I shall die some day, which is not so.
- Stephen Leacock

If you are injured in a motor vehicle accident, the Road Accident Fund is there to compensate you for your injuries and for any resultant loss of earnings. Recent changes to the Road Accident Fund Act, though, are bad news for anyone injured in a South African road accident. You may need to reassess your medical aid, hospital plan, third party cover, and disability and life insurance in the light of these changes.

Essentially, the changes are aimed at limiting

the Fund's liability to compensate the victims of road accidents. The Fund's primary source of income is the fuel levy paid by motorists on petrol and diesel. The value of claims, before the changes to the Road Accident Fund Act, far outstripped income from the fuel levy. The latest estimate is that the Fund's cash deficit is in the region of R20 billion.

The Road Accident Fund Act now provides



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LAW LETTER

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coffee with deon

Deon Schaup is a seasoned litigator who specialises in insurance law disputes. We sat down for a cup of coffee in Deon's office, but soon realized that a glass of Meerlust Rubicon would have been far more appropriate for this wine-loving litigator ...

I started my career as a prosecutor and progressed to State Advocate.

Young and naïve, I was honoured when I was offered the task of prosecuting Robert McBride for the Magoo Bar bombing in Durban. This all changed when I traveled to London to take evidence from a witness in exile - Gordon Webster. I was shocked to find people picketing the venue for our meeting and demonstrating against *me*. The chants of "racist" and "fascist" suddenly became very personal. It was an eye-opener and I resigned from the Department of Justice the day after I returned from London. I started articles at Venn Nemeth & Hart shortly thereafter.

It took an hour in the Conveyancing Department to convince me that I was cut out to litigate.

I like the confrontational environment of litigation, but my greatest satisfaction is in finding a way to resolve a dispute. Older, and hopefully wiser, I no longer seek to fight at all costs. It's important to keep your purpose in mind - to resolve your client's problem - and this is not always best served in court.

You need a good dose of common sense to be a successful litigator.



Deon Schaup
Litigation Division

I acted for a golf course designer who had been appointed by the developer of a prestigious golf estate. After my client had done most of the work, he was ousted and Mr Ernie Els was appointed in his place. The golf course that resulted was almost identical to the designs produced by my client and we commenced legal action. A bit of common sense cut short a potentially long court case - we subpoenaed Mr Els. He was about to depart for the United States on tour and wanted none of this nonsense. Mr Els no doubt put pressure on the developer and a quick and favourable settlement followed. This matter was doubly satisfying because I am a golf fanatic (although my current handicap sadly reflects the neglect made necessary by the pressures of work!).

I love the bush. My family and I have traveled through Botswana, Namibia and Zambia and, most recently, Malawi and Mozambique. We have plans to visit the Kafue Game Reserve in Zambia and we would like to see the migration in the Serengeti. I enjoy the quietness of the bush; making a fire at sunset and opening a bottle of good wine.

Which brings me onto my other hobby - wine. I don't have a large collection, but I enjoy it immensely. My philosophy with wine probably reflects my general attitude to life. I never save a good bottle for a special

who benefits?

Bigamy is having one husband too many.

Monogamy is the same.

- Anonymous

Approximately a year before his death, my client divorced his wife. The divorce order was granted after a bitterly contested court action involving all manner of allegations and counter-allegations between the warring parties.

The net result, not surprisingly, was that my client had truly lost "all love and affection" for his wife. The day after the divorce was granted, he was back in our offices talking to our Estates Department about a new will. Understandably, the ex-wife was written out of the will and everything was left in trust for his two young children.

Very sadly, my client never got over the trauma of the divorce and a relatively short time later, he took his own life.

In winding up the estate, we discovered that he had had an insurance policy on his life. Fortunately, the suicide clause provided that the insurance company would only be exempt from paying out in the event of suicide taking place within a year of the commencement of the policy. My client's death was several years after he had taken out the policy.

There was, however, a sting in the tail. My client

occasionally, but invariably open the best bottle I can find in my collection. After all, you never know if you will still be around for that special occasion!

had neglected to change the nominated beneficiary under his insurance policy (his ex-wife) at the same time as rewriting his will.

Despite much begging and pleading from our side, the insurance company refused to pay the proceeds of the policy into the trust. The insurance company insisted, quite correctly, that they had a contract with the deceased and that, in terms of that contract, they were legally obliged to pay out to the nominated beneficiary.

The end result was that my client, having died in tragic circumstances chiefly as a result of his failed relationship with his ex-wife, was the cause of that person coming into a great deal of money.

The message? Check your will *and* your insurance policies regularly to make sure that they have kept track with the personal circumstances of yourself and your loved ones (even in the absence of divorces and other dramatic developments!). A routine reminder in your diary would be a good idea.



Pat Dewes
Litigation Division