

LEGAL LINES

ISSUE 1: NOVEMBER 2018

**ADVICE, INSIGHT AND ANALYSIS
FROM HIGHLY-SKILLED
LEGAL PROFESSIONALS**

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BETWEEN THE LINES

We live in 'interesting' times. Not a day goes by without a major social, political or economic development impacting our personal and business lives. The past year has been particularly turbulent and, with the immediate future likely to be the same as the immediate past, it's no wonder that South Africans are buckling up for a bumpy ride.

It's not easy keeping abreast of all the changes or events, let alone those that have legal implications. Through this newsletter, which we are proud to launch, **Rudolf Buys Attorneys** will bring you regular updates and analysis on relevant legal issues. We will break down sometimes complex-sounding subjects and reflect on how they impact on you. More analysis can be found on our website: www.rbaattorneys.co.za

We trust that you find this information helpful. Please contact us if you have any queries, suggestions or legal requirements.

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THE TOP 3 REASONS WHY YOU NEED LEGAL ADVICE

Generally, legal services are a 'grudge purchase'. Most people don't contact a law firm until they really must, often when facing an urgent legal conundrum. This could be a criminal matter, but, in most cases, the guidance of attorneys is sought for more mundane (yet still complicated) matters. Here are the **top three**:

1. FAMILY LAW ISSUES

Family law covers a wide range of topics, but divorce is the most common. It's usual for two lawyers to be involved – one for each spouse. Besides the signing of divorce papers, they will guide you through:

- child custody;
- visitation rights;
- child support; and
- division of property and debts, for instance.

Adoption, guardianship and emancipation are other examples of family law cases where an attorney's expertise is necessary.

2. ESTATE PLANNING

Essentially, estate planning is the formal decision of how your assets will be distributed upon your death. This is complicated and requires the guidance of a professional to avoid confusion, misrepresentation or inaccuracies: estate taxes, trusts and other legal processes must be put into a notarised document, and a clear, valid will must be drafted. (For more detail, see page 5.)

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3. BUSINESS ISSUES

If you run or have ambitions to run a business, you'll realise that the skills of an attorney are critical from the enterprise's beginning and throughout its operations. Among many other duties, a commercial lawyer will:

1. make sure your business is established with the right structure in terms of **taxation and division of profits**, and can help you dissolve it if the time comes
2. prepare **contracts** to ensure the **terms and conditions** are suitable for you and your clients and that **due diligence** standards are met. He or she can also draw up or review workplace agreements, employment contracts, lease agreements and client agreements
3. help **settle** business **disputes** and avoid litigation
4. work with you to prevent or deal with **unfair dismissal claims**
5. devise the best **asset protection** and **succession plan**, ensuring your personal and business assets are kept safe whether by family, discretionary or unit trusts, Power of Attorney and wills.

DO YOU HAVE A LEGAL QUERY?

Contact **Dylan du Plessis** on
011 706 0151



COMING SOON:

ZERO-TOLERANCE SMOKING LAWS

Bad news for smokers: if Health Minister Aaron Motsoaledi has his way, **smoking will be banned in all public spaces** very soon. The Tobacco Bill proposes to control smoking through a total ban of smoking in outdoor public areas, to regulate the sale and advertising of tobacco products and electronic devices (e-cigarettes), and to regulate the packaging of those products and devices.

IF THE BILL IS PASSED INTO LAW, SOUTH AFRICANS WILL SEE, AMONG OTHER CHANGES:

- a zero-tolerance policy on indoor smoking in public places (including the removal of designated smoking areas in restaurants);
- a ban on outdoor smoking in public places;
- smokers forced to be at least 10 metres away from public entrances when smoking outside; and
- removal of all signage on cigarette packaging, aside from the brand name and warning stickers.



The Health Department believes these measures will boost economic growth; with reduced tobacco consumption comes a reduction in smoking-related illnesses and death, and an increase in productivity. Cigarette manufacturers, farmers and township entrepreneurs have a different view.

AgriSA, the Food and Allied Workers Union and the SA Spaza and Tuckshop Association believe the bill will "devastate South Africa's agriculture and township businesses". They predict thousands of job losses and the closure of hundreds of farms.

We'll keep you up to date...

WHEN YOU NEED A DIVORCE ATTORNEY

No one has ever married to separate. True love is supposed to last forever, but divorce rates are soaring throughout the world. In South Africa, almost **50% of marriages end in legal separation**; in fact, statistics show fewer and fewer people are getting married, while increasing numbers are filing divorce papers.

Though we have yet to pinpoint the exact reasons why, several explanations have been suggested for our climbing divorce rate, from the influence of social media to the waning authority of religion. What's certain is that the divorce process is a complicated one, and, if you're not properly represented, the consequences and expenses can quickly climb.

In some cases, a divorcing spouse wants to save money by representing themselves (known as a 'do-it-yourself divorce'). This isn't a bad idea if the divorce is simple, meaning uncontested and there is no argument over property, money or children.



However, anything more complex than that and **professional guidance is critical**. Disputes over property and debt division; child custody and visitation issues; spousal support; or the reimbursement of claims for separate property contributions or wasted marital assets require – at least – the guidance of an **attorney acting in a limited-scope capacity**. He or she can negotiate these matters on your behalf and represent you in court or at a custody trial if needed. Other options include a **consulting attorney**, who works behind the scenes and gives you advice as needed or a **full-scope attorney**, who will handle every aspect of your case.

When considering your options, keep in mind that undoing a divorce agreement is difficult; it's wise to hire an **experienced divorce lawyer to review your case before you conclude or sign anything**.

50%

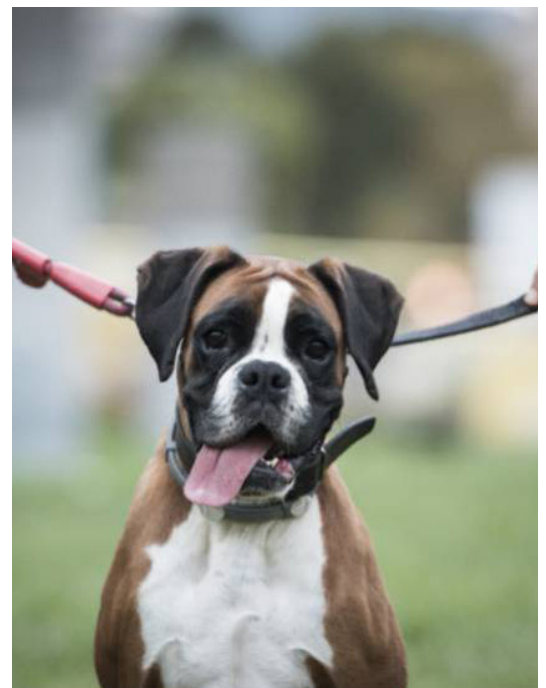
**HALF OF ALL DIVORCES ARE INITIATED BY WIVES
ACROSS ALL POPULATION GROUPS.**

DIVORCE: WHO GETS THE DOG?

It's not uncommon for **divorcing couples to fight over a beloved pet**. With people putting off marriage until later in life or choosing not to have children at all, cats, dogs and even rabbits are taking the place of precious progeny.

But does that mean, in the case of divorce proceedings, that **pet custody** should be governed by family law? After all, many couples with pets refer to them as their "fur babies". The answer is no. As cold as it may seem, Mr Mittens is simply **an asset under SA law**, the same as your car, fridge and TV. This means that the courts, when deciding custody, will look at who bought the pet.

Sometimes, they aren't completely heartless; some will base the final decision on the **best interests of the pet**, much like the process of child custody. In this instance, the **pet should end up with its primary caregiver in a home where it is happiest**.



A pet custody battle can be avoided by a prenuptial agreement that outlines the division of assets upon divorce. It's not the most romantic thing to do before getting married, but some (lawyers and the divorced) would say it's the most practical.



STOPPED AT A ROADBLOCK

WHAT ARE YOUR RIGHTS?

An inconvenient but 'necessary evil', roadblocks help to keep motorists safe, especially in times of increased traffic. But reports of police transgressions mean many of us are wary of stopping when flagged down by officers. In this case, it helps to be clear on your rights.



KNOW WHAT YOU CAN AND CAN'T BE ARRESTED FOR

Police can arrest **without warrant** any driver who:

- is driving under the influence of drugs or alcohol
- is driving dangerously
- is purposely blocking the road
- is driving with a cancelled licence
- is suspected of having committed a crime or of being about to commit a crime
- verbally abuses an officer. You can't be arrested for being rude, but you can be for crimen injuria, the intentional and unlawful infringement of a person's dignity through obscene or racially offensive language and gestures.

Though the police can also arrest you for unpaid fines, a warrant must be issued for those fines and officers must present you with a valid copy.



UNIFORMED OFFICERS MAY STOP ANY VEHICLE

Reasons vary from routine checks, a traffic offense, or to investigate a suspicious vehicle or driver. If this happens to you, you have the right to verify the authenticity of the officer by requesting a badge number.

YOU'LL BE STOPPED FROM DRIVING AN UNROADWORTHY CAR

The police can legally prevent you from continuing to drive your car if it's a danger to you and other road users. They may let you drive to your destination if it's a short distance away, however.




WHAT TO DO IF A TRAFFIC OFFICER BREAKS THE LAW

1. Gather evidence. In South Africa, you have the right to film the police. SAPS Standing Order 156 states: **An officer cannot stop you from taking a photo or video, seize or damage your equipment, or force you to delete the footage.**
2. Take down the officer's registration number and vehicle number on the side of the car.
3. Call 10111 to report the officer. Tell the operator that you have been stopped by police and keep talking until you have identified the officer.



DID YOU KNOW:

In Switzerland, it's illegal to flush the toilet after 10 p.m., as it's considered noise pollution.



Last Will and Testament

WHAT YOU NEED TO KNOW

It's not something everyone feels comfortable thinking or talking about, but having a will in place is necessary for every adult. Here are some key points you should know:

WHY SHOULD I HAVE A WILL?

Drafting a will should help you decide who the beneficiaries and the executor of your estate will be after you pass away. It will also prompt you to appoint the guardian of your choice to take care of your children.

IF IT'S SO IMPORTANT, WHY DO SOME PEOPLE STILL NOT HAVE A WILL?

There are many reasons: some people think that talking about this subject will cause their death or misfortune, some feel that their children are responsible enough to sort out things among themselves, while others believe the value of their assets is too low to merit having a will. A common reason is feeling too young – "I'll do it later, closer to the time".

WHAT HAPPENS TO MY ASSETS IF I DIE WITHOUT A WILL?

Your estate (assets) will be distributed in terms of the law of intestate succession. This may include beneficiaries whom you may not have wished to benefit, or may exclude persons whom you would have preferred to benefit. The Master of the High Court will appoint a curator to administer the property of your minor children and their inheritance will go to the Guardian's Fund. A guardian, who may be different to the person you would have preferred to care for your children, may be appointed by the court. Finally, when a person dies intestate, the Master appoints an executor of the estate.

WHO SHOULD DRAW UP MY WILL?

Someone who has the necessary knowledge and expertise; your lawyer or law firm, your bank, or a trust company can help you. Once the will is completed, you must sign and date it in the presence of two witnesses to make it valid. Both witnesses must be aged 14 or above and be competent to give evidence in a court of law. Keep in mind, a beneficiary in a will cannot be involved in the drafting of or attest to a will as a witness. Similarly, a person who attests and signs a will as a witness or is involved in its drafting is disqualified from benefiting from it.

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WHAT DOCUMENTS DO I NEED?

- The name and identification details of the executor of your estate
- The name and ID number of your spouse and how you are married (in community of property, out of community of property, etc.)
- Copy of a marriage certificate. Did you divorce recently? If so, a copy of the decree of divorce and settlement agreement will be required
- The full names and ID numbers of all your children, including adopted and stepchildren, you wish to benefit from your will
- The names and ID numbers of any grandchildren you would like included
- The name and contact details of a guardian if you have minor children
- Details of the assets you wish to be donated to institutions, such as a church, hospice, orphanage, etc.
- Details of any other party or institution you wish to benefit
- Copies of title deeds in respect of immovable properties in South Africa or mortgage bonds thereof
- Copies of insurance policies, such as endowment policies, life policies, credit life policies, etc.
- An inventory of liabilities.

WHERE SHOULD I KEEP MY WILL?

There is no specific formal place to keep a will. However, it must be kept in a safe place. Most banks, accountants, trust companies, lawyers and registered financial advisors keep wills on behalf of their clients. It's best to make a copy of your will and mark it clearly with the word "copy". Also make a note on the copy indicating where the original is kept. Importantly, make sure you inform the executor where the will is kept.

A final note: Remember to update your will from time to time, especially if important events have taken place – including the birth of a child, marriage, divorce, death of a beneficiary or executor, gaining of property that is not part of the existing will, etc.

NEED HELP DRAFTING YOUR WILL?
Contact **Rudolf Buys** on **011 706 0151** for advice.



Lighter Side of Law

At a convention of biological scientists, one researcher remarks to another, "Did you know that in our lab we have switched from rats to lawyers for our experiments?"

"Really?" the other replied, "Why did you switch?"

"Well, for three reasons. First, we found that lawyers are far more plentiful, second, the lab assistants don't get so attached to them, and third, there are some things even a rat won't do."