WITH COMPLIMENTS

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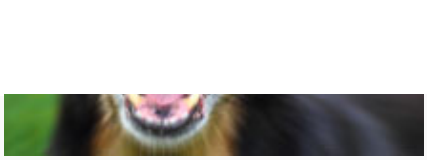
YOUR DOG, CAT OR COW (EVEN YOUR BEES) COULD COST YOU MILLIONS

"Ignorance is Bliss Dangerous" (Internet meme)

Our law will generally hold you liable for damages only if someone else can prove that you caused them loss/damage/injury through your "fault" (intent or negligence). That seems fair and logical – if it's your fault, you pay.



If however the loss was caused by your animal/s, you are in a much more dangerous position - you can be sued on a "no fault" or "strict liability" basis. And that's a sobering prospect. It means that bad behaviour by Maxie the Mongrel, Skollie the Cat, Daisy the Cow, or even (per an old 1926 case) your "domesticated" swarm of bees, could leave you with a bill for millions **without your being in any way careless or at fault.**

Ignorance of that risk is very definitely dangerous rather than bliss.

A recent High Court case illustrates.

R2.3m claimed by a dog attack victim

- The claimant was walking down a public street, minding his own business and with every right to be where he was, when three large "Pitbull type" dogs attacked him, viciously and without provocation.
- He was very seriously bitten and ultimately had his left arm amputated at the shoulder. He escaped more serious injury or even death only through the courage of a passer-by who fought the dogs off (and was himself attacked for his trouble).
- The victim claimed R2,341m in damages from the dogs' owner.
- The dogs had no history of biting or attacking people and were treated as house dogs. They had the run of the owner's house and garden/yard, which was walled and fenced off from the street. Access to the street was via a gate which was (said the dogs' owner) normally kept locked, and was on the day in question double-padlocked.
- An intruder, claimed the owner, had in his and his family's absence broken the gate open and left it open – giving the dogs access to the street and to their victim.

Liability and the law

- The victim was unable to prove that the dogs' owner rather than an intruder had left the gate open, so had failed to show that the owner had been negligent in any way.
- But, held the Court, the owner was still accountable on the basis of an old Roman law – the "pauperian action" or *actio de pauperie* – which makes you strictly liable for the consequences of your domesticated animal's behaviour. The thinking behind this ancient law incidentally was that "an animal (being devoid of reasoning) is incapable of committing a legal wrong" and there have been suggestions that it be scrapped in our modern law. But as of now it is still very much enforced by our courts, and you remain at risk.
- Pauperian liability is a complicated subject (involving much Latin and learned judicial interpretation of ancient laws) and you will need specific legal advice if you find yourself on either side of a claim. But in a nutshell you are liable only if your domesticated animal (different rules apply to wild animals) acted from "inward excitement or vice" and against its natural behaviour.
- You do also have several defences available to you, such as the victim contributing to his/her loss through their own actions (provoking an attack or trespassing for example) or – the defence raised in this case – where the loss results from the negligence of another person. Again, a complicated subject needing specific legal advice, but out of interest let's have a look at how the Court in this case dealt with the particular defence raised.
- The defence in question is available if you can prove that a third party had control of the animal but negligently failed to exercise that control properly. The dog owner in this case asked the Court to extend that defence to cover his situation where the intruder had no control over the dogs, but negligently gave them the opportunity to attack the victim.
- The Court refused, holding that the defence only applies where the third party has control of the animal. The dog owner must therefore pay the victim whatever level of damages he can prove. So – bottom line - **you are liable even when the fault lies with someone else, and even when you are completely without fault, unless that other person had control of the animal at the time.**

Protect yourself!

First step obviously is to reduce the risks your animals pose to others. Then check that your insurance will cover you if you are sued. Disclaimers of liability need careful wording to afford any hope of protection.

NEIGHBOURS BUILDING? KNOW YOUR RIGHTS RE PLAN APPROVAL

"You can be a good neighbour only if you have good neighbours" (Howard Koch, "Invasion from Mars" author)

Your neighbours apply to the municipality for approval of building plans. You object strongly – if allowed, you say, the new building/addition/alteration will seriously impact on your property's appeal and value. It will be unsightly and objectionable. It will ruin the neighbourhood.

How must the municipality's "decision makers" assess the plans in light of your concerns? A long-running legal fight over just that question has finally been resolved by the Constitutional Court.

The Court's decision is a vitally important one for all property developers and owners planning to build, as well as for their neighbours, for the simple reason that no construction work can proceed without municipal approval of the building plans (although note that some categories of "minor work" may not require plan approval – ask your local authority for details).

Passed plans and blocked off balconies

- The owners of a seventeen story city building had been allowed to build balconies right up to the neighbouring four story building's boundary.
- The neighbouring building's owners applied for approval of plans to add another four stories. The problem was that the balconies on three floors of the first building would touch the top stories of the new additions.
- Predictably, strenuous objections to the building plans were lodged, but in the end result the municipal decision makers approved the plans, and building commenced.
- Had the plans been properly approved? A string of court battles later, the highest court in our land has had its (final) say on the matter.

3 disqualifying factors and the "legitimate expectation" test

Central to this decision is a statutory protection for buyers and neighbours in regard to various "disqualifying factors". The proposed building cannot be (our emphasis) "erected in such manner or will be of such nature or appearance that–

1. The area in which it is to be erected will probably or in fact be **disfigured** thereby;
2. It will probably or in fact be **unsightly or objectionable**;
3. It will probably or in fact **derogate from the value of adjoining or neighbouring properties**".

The Court's decision - the building plans had not been properly approved. They must go back to the municipality for re-assessment, and the developer is accordingly back to square one. Presumably a demolition order will be on the cards if they are ultimately unsuccessful in having their plans passed.

A decision maker must, held the Court, in assessing the 3 factors above consider the impact of the building proposal on neighbouring properties, from the perspective of a "hypothetical neighbour". In a nutshell, will it probably, or in fact, be so disfiguring of the area, objectionable or unsightly that it would exceed the neighbour's "legitimate expectations"?

And whilst it has always been clear that neighbours have to be considered in regard to the "derogation of value" (i.e. reduction of value) aspect, this decision for the first time confirms that their viewpoints are relevant, and must be considered, in regard to all three aspects.

Stronger rights – but not for "sensitive neighbours"

That certainly doesn't mean however that neighbours can willy-nilly object to plans and expect the

municipality to back them regardless of the facts. On the contrary, the Court made it clear that "The legitimate expectations test is not a subjective test determined by the whim of a sensitive neighbour. The test is objective and based on relevant facts, which would, in the ordinary course, be placed at the disposal of the decision maker".

The important thing remains that your rights as the "non-building neighbour" just got a lot stronger. Protect them!

LOSING YOUR LICENCE WITH AARTO DEMERITS: MORE DANGER THAN YOU THOUGHT, AND THE WHEELS ARE TURNING

"The one thing that unites all human beings, regardless of age, gender, religion, economic status, or ethnic background, is that, deep down inside, we all believe that we are above-average drivers" (humourist Dave Barry)

AARTO (the Administrative Adjudication of Road Traffic Offences Act) has been partially in force for years, but its demerit provisions have been on ice for so long now that many of us have lost sight of just how seriously it will impact both ourselves as individuals, and our businesses.

Every individual and every business is at risk

Law-abiding motorists will no doubt welcome the crackdown on serial traffic offenders, but we also need to manage the risks.

Every motorist, every vehicle owner, every professional driver and every transport operator will be at serious risk of losing their licences/permits/operator cards. Even businesses outside the transport sector will need to manage this – what happens if your sales people are grounded or your office staff can't drive to work?

The wheels are turning fast now, with amendments to the Act at long last passed by Parliament, and set to come into law when signed by the President.

Will it be delayed yet again?

The demerit proposal has been bouncing around for a decade, with several false starts and there is talk of court challenges, plus the commencement date may or may not be delayed.

But at long last the wheels are definitely turning, and turning fast.

Be prepared!

Unlucky 13 – easier to reach than you thought

The demerit system is complicated, but in a nutshell you will in addition to paying a fine incur demerit points for a whole range of offences.

And anyone with 13 or more demerits will have their driver's licence/professional driving permit/operator card automatically suspended (3 months' suspension for every point over 12). And 3 suspensions will result in full cancellation.

Don't think that 13 demerits will necessarily take the average driver a long time to accumulate. Consider the demerit points applicable to some sample offences (there are many thousands of them – the table below gives just a few examples).

Sample offences and demerit points

Sample Offences	Demerit Points
(N.B. in some instances, higher demerit points apply to buses, minibuses, goods vehicles, professional drivers etc)	
Fail to licence vehicle	1
No number plates on vehicle	6
Number plate not clearly visible/legible	1
Drive without correct code of driver's licence	4
Not keeping driver's licence in vehicle	1
Unsafe following distance	3
Overtake on a blind rise or curve	3
Dangerous lane changing	3
Fail to yield to pedestrian at pedestrian crossing	1
Encroach on right half of road when turning right	2
Fail to obey Stop sign	1
Fail to obey Red or Amber traffic light	1
Holding cell phone whilst driving	1
Negligent driving	1
Reckless driving	6
Drunk driving or blood alcohol over limit	6
Fail to stop after accident (varies according to damage or injury, failure to render assistance etc)	3-6
Speeding: 16-20 km/h over limit	1
21-25 km/h over limit	2
26-30 km/h over limit	3
31-35 km/h over limit	4
36-40 km/h over limit	5
40+ km/h over limit	6

Reducing demerit points, and discounts on fines

You are also rewarded for obeying the law -

1. Any demerit points you have picked up are reduced by one point per 3 month period you remain offence-free.
2. Early payment of fines will earn you a 50% discount. Set up a payment control system so you don't miss payment deadlines.

Businesses and employers – manage your risks

Think now about how you will manage the risk of your employees (especially those employed as drivers) repeatedly offending –

- How will you monitor your drivers' demerit points? Although for many offences both driver and operator will incur demerits, some driver offences will apply to the driver only.
- Are your employment contracts correctly structured to ensure you have access to your employees' demerit points' status? And to deal with the consequences if they have their licences suspended or cancelled?
- Check your insurance policies – must you disclose any changes in your employees' demerit status? Are you at risk of losing cover?

SMALL CLAIMS COURTS - FROM 1 APRIL YOU CAN SUE FOR UP TO R20,000

The monetary jurisdiction of Small Claims Courts has been increased from R15,000 to R20,000 from 1 April 2019.

Not all claims can be pursued in a Small Claims Court -

- Claims over R20,000 must be pursued in the ordinary courts (you can if you like reduce a larger claim to the R20k to avoid having to do that).
- Only individuals can sue in a Small Claims Court, i.e. not companies, close corporations etc.
- The State and local authorities can only be sued in the ordinary courts. Other than those exclusions, you can sue anyone including companies and the like.
- Certain types of claim (such as divorce matters, some damages claims, interdicts, will disputes etc) must also go to the ordinary courts.

Even if your claim qualifies for the Small Claims Court, think of asking your lawyer for guidance on whether it is your best course of action. Sometimes even seemingly minor claims can have wide ramifications, and there is no substitute for professional advice!

YOUR WEBSITE OF THE MONTH: MUSIC FOR PRODUCTIVE WORK

"If I were not a physicist, I would probably be a musician. I often think in music. I live my daydreams in music. I see my life in terms of music." (Albert Einstein)

Music, science tells us, really can help us work, and learn, and be creative.

Earphones mean you can listen to your favourite tunes all day with zero disruption to your fellow employees (and clients waiting in Reception!), and you'll never be short of new music with a streaming service and a high-memory smartphone. But what should you listen to?

"Create the perfect playlist for productive work" on **Quartz** discusses how music can enhance workplace performance (employers take note!), and what musical tempo (beats per minute) can help induce the alpha state in your brain so that your mind becomes calm and alert, with heightened concentration.

Different types of music, it turns out, are ideal for particular tasks in four categories –

- Simple tasks

- Learning
- Work you love
- Creative work.

Happy (and productive) listening!

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