



WITH COMPLIMENTS

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FACEBOOK DEFAMATION – THE TRUTH IS NOT ENOUGH!

You are engaged in a bitter dispute – perhaps it's a fight over money, a family feud or a messy divorce, a



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disaffected employee or a vengeful neighbour. You decide to resort to Social Media “to tell the truth” about your nemesis. You feel totally safe doing so – after all, our Constitution protects our rights to free speech, the Internet is a bastion of Freedom of Information, nothing said online is “real”, and anyway who can object to you telling the truth?



Wrong! A recent High Court judgment fires yet another strong warning shot across the bows of would-be Social Media defamers, confirming that –

1. Online defamation is as unlawful as its real-world counterpart, and
2. To defend yourself from a claim for defamation you must prove more than just that you are telling the truth.

A prestigious polo event and accusations of cheating

- A marketer and an events organiser were locked in dispute over payment for a past event.
- When the organiser began work on another event, a high-profile and prestigious polo gathering, the marketer created a Facebook page in its name.
- She then posted statements on the page in which she –
 - Warned business owners and jobseekers not to do business with the organiser,
 - Accused the organiser of having ‘screwed’ (cheated) many people out of thousands of Rands,
 - Advised people to hold onto their money and sanity and rather not get involved with the organiser.
- Threatened by the organiser’s attorneys with an interdict application and a charge of *crimen injuria* (criminal impairment of another’s dignity), the marketer’s response was an offer to remove the posts, but only if she was paid the moneys she claimed.
- Whereupon the organiser approached the High Court for assistance. The Court interdicted the marketer from “unlawfully interfering with the applicant’s business” and from “unlawfully casting aspersions on the applicant’s character, personality and business reputation.” To rub salt into her wounds, the marketer was ordered to pay all the legal costs.
- The marketer had, held the Court, failed to prove (at least on the papers before the Court – no actual evidence was led) the truth of her allegations that the organiser had “screwed” (in the sense of cheated) hundreds of people. In any event said the Court, her “defiant written response seems to me to make it clear that her attack on the applicant was aimed at ensuring payment of what she claimed was owing to her, and had nothing to do with the public interest or fair comment”.
- There was, held the Court, “no justification for publishing these statements. Even if they were true, it is difficult to see how they could have been in the public interest or fair comment in the context of the law of defamation.”

“Truth and Public Interest”

That’s important because “Truth and Public Interest” is a common defence to defamation claims, but it’s widely misunderstood.

As the Court pointed out: “People need to be aware that the publication of a defamatory statement concerning another person on social media is not excused by the fact that the statement is true. **It also has to be in the public interest, which is not the same as being interesting to the public...**” (our emphasis). What

exactly a court will consider to be sufficiently “in the public interest” will depend on the facts of each case, so take specific legal advice in doubt.

The bottom line – think twice before you post anything online!

LANDLORD V TENANT: CONSIDER THE TRIBUNAL DISPUTE RESOLUTION OPTION

*“Agree, for the law is costly”
(Marcus Tullius Cicero,
Roman lawyer and
statesman)*



We all know how easy it is for misunderstandings and disputes to arise between landlords and tenants, and whilst most can be resolved with a bit of open communication and negotiation, sometimes independent intervention is needed.

Enter the Rental Housing Tribunal, which uses the Rental Housing Act to “speedily resolve” landlord/tenant disputes, to balance the rights of both sides and to protect them both from “unfair practices and exploitation”.

Note that this applies only to residential housing, not to commercial or industrial leases.

What's the cost and how does it work?

It's free, and to get going you lodge a complaint with your local Tribunal. An impartial mediator is then appointed to help you settle the dispute and reach an agreement. If that fails a formal hearing is held and a ruling issued. Either side can take the ruling (which is binding and must be complied with on pain of criminal prosecution) on review to the High Court.

You can if you like draw up your own complaint and represent yourself in the hearings, but – particularly if there's a lot at stake – taking legal advice upfront is far safer.

Because the Tribunal cannot order eviction (only a court can do so) and needs time to resolve complaints, landlords faced with a non-paying tenant will usually go straight to court.

For most disputes however, both landlords and tenants should seriously consider following the quick, cheap and easy Tribunal route.

Prevention being better than cure...

Of course first prize is as always to avoid disputes altogether. Start off with a properly-worded, clear and comprehensive lease. Make sure you comply with Rental Housing Act basics like joint inspections for damage, investment and refund of deposits, avoiding unfair practices and so on.

Ask your lawyer for assistance here – blindly using a generic lease without taking advice is a recipe for disaster.

BITCOIN AND THE LAW – IS IT LEGAL, WHAT ABOUT TAX, AND CAN YOU LEAVE IT TO YOUR HEIRS?

Have you joined, or been tempted to join in, the “Bitcoin frenzy”? If so, read on.

Bitcoin and Ethereum are probably the best known of the cryptocurrencies, but (as at 10 April 2018) there were over 1,565 of them, and that number is growing.



Whether Bitcoin and its cousins are good investments is a matter for you and your financial advisers to puzzle over but let's have a look at a few legal aspects –

Expect grey areas and big changes

Governments, Tax Authorities, and Central Banks around the world are struggling to get to grips with cryptocurrencies and how to treat them. Some countries allow them; some have banned or restricted them. Expect ongoing uncertainty and a lot of future change in these official positions, including attempts to regulate alternative currencies in general.

Are cryptocurrencies legal?

The short answer seems to be yes, there's nothing to stop you buying, holding, using or selling them. The Reserve Bank's official position is that they can be traded and used as “a medium of exchange, a unit of account and/or a store of value”, but they aren't “legal tender” (“bank notes and coins in RSA which can be legally offered in payment of an obligation and that a creditor is obliged to accept”). What that means is that Joe Plumber is free to accept payment from you in Bitcoin if he wants to. He just can't insist on it, nor can you.

SARS' view (see “Income Tax and VAT” below) is probably going to be your greater area of concern for the moment.

What if you need help from a court?

The Reserve Bank warns that you acquire cryptocurrencies at your own risk and that you “have no recourse to South African authorities”.

What that means in practice remains to be seen (would SAPS really refuse to investigate a theft of Bitcoin?), and whilst there is no precedent to confirm that our courts will indeed help you if you have to sue over, for example, a Bitcoin transaction gone wrong, the majority view seems to be that they will.

Must you pay Income Tax and register for VAT?

From the horse's mouth so to speak, this is some of what SARS says (all highlighting is ours) -

- It will “continue to apply normal income tax rules to cryptocurrencies and will expect affected taxpayers to **declare cryptocurrency gains or losses** as part of their taxable income.”

- “The onus is on taxpayers to declare all cryptocurrency-related taxable income in the tax year in which it is received or accrued. Failure to do so could result in **interest and penalties**.”
- “...cryptocurrencies are not regarded by SARS as a currency for income tax purposes or Capital Gains Tax (CGT). Instead, cryptocurrencies are regarded by SARS as **assets of an intangible nature**.”
- “Determination of whether an accrual or receipt is **revenue or capital** in nature is tested under existing jurisprudence (of which there is no shortage).”
- “Taxpayers are also entitled to **claim expenses** associated with cryptocurrency accruals or receipts, provided such expenditure is incurred in the production of the taxpayer’s income and for purposes of trade. **Base cost adjustments** can also be made if falling within the CGT paradigm.”
- “...VAT treatment of cryptocurrencies will be reviewed. Pending policy clarity in this regard, SARS **will not require VAT registration as a vendor** for purposes of the supply of cryptocurrencies.”

There’s more, and you don’t want to take any chances here, so consult an expert in need.

The Endgame: Leaving Bitcoin in your Will

Your cryptocurrency holdings are assets in your estate and you will want your heirs to get them. Your executor must deal with them together with all your other assets (both physical and digital).

Remember however that your holdings will be lost forever if your heirs/executors don’t know about them or can’t access your digital cryptocurrency wallet. They will need all your digital keys - both “public” (wallet address) and “private”.

In whatever manner you plan to leave your heirs/executor a record of these keys on your death, avoid disaster with these tips –

1. Do it now – no one knows when they’ll die.
2. Do it securely – anyone with your private key can clear your wallet out, and criminals know that.

WHEN IS DISMISSAL FAIR FOR A FAKE CV?

“...it cannot be right and proper to reinstate or re-employ a person in a position that was secured by the making of false statements” (Extract from a Labour Appeal Court judgment quoted in the case below)



Employees and employers alike should be aware of a recent Labour Court decision which once again underlines the duty of employees to act honestly and with integrity

towards their employers.

The 82 year old financial manager who said he was a CA

- A company, despite having a normal retirement age of 65, offered a position as financial manager to a man turning 82.
- He got the job in preference to two other candidates, said the company, not only because of his job knowledge and experience, but also because of the qualifications listed in his CV – particularly a B.Com, an MBA, and a qualification as a CA(SA) i.e. a Chartered Accountant.
- Four years later he was unable to produce proof of these qualifications on request and admitted that he didn't actually have them.
- He argued however that he had "recognition of prior learning" or "equivalent qualifications", that being a CA wasn't actually a requirement of the job, and that the company was just trying to force him to retire by raising "all these stupid little things".
- His resultant dismissal for misconduct was set aside by the CCMA (Commission for Conciliation, Mediation and Arbitration), which also awarded the employee compensation of over R300,000.

Gross dishonesty = fair dismissal

On review however the Labour Court held the dismissal to have been fair on the basis that –

- The employee had claimed to be a CA by handing in his CV to this effect as part of his job interview, despite being neither qualified nor registered as such.
- His supposed CA qualification was a material factor in his appointment, and even if being a CA wasn't a job requirement, "this does not detract from the employee's dishonesty".
- The employee had been "grossly dishonest" and "to aggravate this grave misconduct, he also lied about having a B.Com and MBA, and showed no remorse whatsoever."
- Dismissal was, accordingly, "patently warranted" and the employee's R300k award was set aside.

YOUR WEBSITES OF THE MONTH: SMEs PREPARE FOR THE 2018 FLU SEASON

With the Northern Hemisphere emerging from a particularly bad flu season, expect South Africa to be hard hit this winter. The H3N2 strain seems to be a particular concern because of its association with pneumonia and other complications.

The sick-leave cost to the economy is going to be huge, and SMEs are particularly vulnerable. Think about how much it costs your business in both direct and indirect losses when you or key



staff are laid low for days or weeks on end.

The advice in these websites may help you in both your business and your personal life (*just remember there's no substitute for proper medical advice!*) –

- Time Magazine's "Want to Protect Yourself from Getting the Flu? Get Some Sunshine" on its [website](#).
- "You Asked: How Can I Avoid Getting Sick?" also on [Time](#).
- "6 Flu Vaccine Myths" on [LiveScience](#).
- "Weekend Recipe: A Hearty Chicken Soup That's Good for Your Soul and Immune System" also on [Time](#).
- "What to Eat (and Drink) When You Have the Flu" (watch the video) also on [Time](#).
- "Common Cold Treatments That Can Actually Make You Sick" on [HealthLine](#).

As a bonus, treat yourself to "10 Healthy Cold-Weather Snacks that'll Warm You Right Up" on [Prevention.com](#).

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