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## **NEWSLETTER**

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### **WE WISH YOU A VERY HAPPY XMAS AND A PROSPEROUS NEW YEAR**

**Future expenses deduction for general contingencies:** Occupational therapists are notorious for listing as necessary future expenses items which most middle-income households would have incurred in any event (eg bath mats and domestic help) or recommending washing machines and tumble driers and vacuum cleaners for low-income households that do not even have electricity. In *Van der Merwe v Premier of Mpumalanga* 2005 513 QOD 15 (T) some substantial general contingencies were deducted from future expenses: 35% for a gardener; 50% for house help; 30% for child-care assistance; 15% for backup assistant; for most items the deductions were 0% or 5%.

**Informal sector job creation:** Industrial psychologist Dr Fourie makes the following observation in a recent report:

"It is noted that "earning capacity" is directed at "likely earnings" and not "potential earnings" (Koch 2009). Although it is likely that employment continues to be undercounted in national household surveys, South Africa experienced an average growth in total recorded employment of about 20% from 1993 to 2000. Most of this growth may be attributed to an increase in the number of workers in domestic services, the agricultural sector, and the informal sector while the formal sector continues to contribute little to job creation in South Africa ([www.statssa.gov.za](http://www.statssa.gov.za) 8 December 2007). Therefore the probability for Mr M to be employed in the informal sector is much higher than to be employed in the formal sector".

Many industrial psychologists are far too glib about attributing formal sector employment to accident victims. Just because formal sector earnings statistics are readily available does not mean that jobs with such remuneration levels are readily available.

The extreme absurdity is the 50 year old man who has worked as a gardener all his life earning R15000 per year, who is then projected as finding formal-sector employment earning R90000 per year.

Too many industrial psychologists continue to make the unforgivable error of judging job grade by the incumbent's level of remuneration. Job grades are concerned with job content to which attaches a wide range of remuneration levels reported in the surveys.

**Use of a company vehicle:** The remuneration package received by many employees includes a car allowance or the free use of a company vehicle primarily intended for business purposes. Actuaries generally assume 50% private use of the stated total cost of the benefit to the employer. In *Currie v RAF* 2008 5J2 QOD 201 (SE) the value of private use was determined to be only 20%.

**Family background substantially affects career prospects:** Industrial psychologist Dr Ralph Wortley makes the following observation:

"The importance of family background in providing the means and motivation for advancement has been demonstrated in a number of studies... Essentially they show that social background, by setting goals and standards, by being able to provide for a better or worse education and by ultimately providing a network of contacts for the individual, has a powerful effect on that individual's future progress."

In South Africa one can observe the "poverty trap" phenomenon aggravated by broken households and disrupted home life. AIDS infection in South Africa is over 30%. This means numerous households where both mother and/or father have died just when the children are entering their school years. The problem is exacerbated by unrealistic career expectations such as doctor or lawyer by well-meaning but naive parents or relatives. The well-paid trades such as artisan electrician, boilermaker, welder are not perceived career options, although many drift informally into such employment. One suspects that frustrated unrealistic high hopes and the drudgery of conventional employment sends many a capable young person into criminal circles. Career counselling, or advertising, for parents as regards what to expect for their children may have much to commend it.

**SARS taxation of small retirement lump sums:** It happens all too often that low-income persons become entitled to a benefit from a retirement or provident fund. In the order to pay the benefit the fund must obtain a directive from SARS which usually requires the deduction of 15% withholding tax, that is R15000 on a payment of R100000, a lot of money for a low-income person. The horror of this practice is that the 15% can only be recovered if the beneficiary is a registered tax payer. A large number of low income persons never earn enough to be liable for taxation and thus never in their lifetimes have the need to register as taxpayers. Now they must register as a taxpayer for the once-off recovery of the 15%. The difficulties with registration are such that most such persons just write off the 15%. Is there no-one out there reading this who can perhaps bring about some relief for these persons who are being robbed of money they really do need? It is one thing to tax those who have the means, but quite something else to gouge excessive tax payments from the have-nots.

**General damages for young persons:** In theory the award for general damages should have regard not only to the intensity of the suffering or physical deprivation, but also to the duration thereof. Thus an accident victim in his teens who suffers a leg amputation should receive a substantially larger award for general damages than a person in their 60's who suffers the same injuries. In *Sofute v RAF* 2007 5E6 QOD 1 (CK) the Court had regard to youth of the claimant and, it seems, made an appropriately larger award.

**New QOD citation:** Juta Law recently published the digital version of the *Quantum of Damages in Bodily and Fatal Injury Cases* which reproduces the entire 5 volumes of the series by Corbett & Buchanan & Honey. In the *Quantum Yearbook* I have for many years cited this series in the form *Sgaty v RAF* 5 C&B A2-1 (E) where "5" is the volume number and the "A2" the section in the volume. The Juta law digital series has adopted the citation form *Sgaty v RAF* 5A2 QOD 1 (E) and the 2010 *Quantum Yearbook* will now follow this format.

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