

NEWSLETTER

(Number 29 - June 1998)

Dear Reader,

Financial statistics:

	Inflation (year-on-year)	Interest (long bond yield)	Real rate of return
South Africa	5,4%	14,0%	8,6%
England	3,7%	6,1%	2,4%
Japan	1,8%	1,8%	0,0%
United States	1,7%	5,9%	4,2%

The above reflect data available at time of publication (RSA=03/98; others=12/97). Pepper (1984 *TFA* 145) has analysed real rates of return in Europe since the year 1734. He concludes that a fair estimate for the underlying long-term real rate of return is between 3¼% and 3½% per year. A useful rule of thumb for predicting future inflation is to deduct 3¼% from the long bond yield (in South Africa conventional wisdom has preferred 2½%). This points to rising inflation in South Africa and the USA, and falling inflation in England and Japan. The Japanese production price index is already negative, ie the cost of producing goods is less now than it was a year ago. Foreign currency theory states that the rand should decline by the difference between the RSA inflation rate and the relevant foreign inflation rate. The above rates then suggest that the rand should have declined against the dollar by 3,7% for the period up to March 1998.

Life tables: The life tables most commonly used by actuaries for damages calculations are derived from the 1984-86 census data. These tables are somewhat dated but they are the latest available. There are tables for whites, coloureds, and asians. Tables for blacks were not prepared. A more recent survey by Dorrington of black mortality indicates mortality rates at roughly the same level as for coloureds. Koch has proposed non-racial tables based on income levels, but other actuaries have declined to follow this approach, preferring instead racial classification. It is unlikely that any new life tables will flow from the most recent census. The AIDS epidemic renders older tables inappropriate in any event. Recent estimates of the prevalence of AIDS suggest that as much as 50% or more of accident victims may be HIV positive. A person who is HIV positive has a life expectancy which is at best 15 years and is more likely 10 years or less. Claims handlers at the RAF would thus be entirely reasonable if they assessed all claims on at most a 10 year life expectancy. In the event of proof that the claimant is HIV negative then the older traditional tables should be admitted. For claims for loss of support the HIV status of the surviving spouse could be taken as conclusive.

Indivisible household expenses: When a breadwinner dies the family is then spared the cost of his or her living expenses. In South Africa the saving is generally taken to be 2 parts of

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the available income with one part allocated to each child and two parts to the surviving spouse. This approach sets South Africa apart from the rest of the world where it is recognised that when a breadwinner dies there are a number of expenses, such as rent and car repayments, which do not reduce. The South African Supreme Court has rejected appeals that regard be had to this financial reality (see *Legal Insurance v Botes* 1963 1 SA 608 (A) at 616B-F; *Nochomowitz v Santam* 1972 3 SA 640 (A) at 647-9). However, in *Jagger v Sentrasure* 1997 (C) (unreported 11.12.97 case 10194/95) the court *mero motu* ruled that 27% of the family income was of an indivisible nature and was thus not to be reduced by two parts before allocation between the dependants. The ruling is to be welcomed. Whether it will survive an appeal to the Supreme Court remains to be seen.

Curator bonis and the furnishing of security: It is generally accepted that when a victim suffers a serious brain injury he or she is entitled to be compensated for the costs of retaining a *curator bonis*. The add-on to the claim is usually about 7½% (in *Carstens v Southern Insurance* 1985 3 SA 1010 (C) at 1029 a percentage of 5,65% was added; however Government Gazette R1602 of 1 July 1991 has since increased the fee on release of capital from ½% to 2%). Certain persons are exempt from providing security and normal practice has been to expect the claimant to appoint such a person. However, in *Webster v Commercial Union* 1994 4 C&B A4-154 (C) the claimant wished to appoint a curator who was not exempt from providing security. The court ordered that the compensation payable should include the costs of providing security and that 18,4% should be added to the overall award. The court emphasised that the relationship with a curator is an intimate one and thus one which requires someone with a personal touch. The distinction between necessities and luxuries is never an easy one. However, the claimant was also awarded a substantial amount for general damages and it is difficult to grasp why the personal touch should not have been provided from this source. After all, that is an important purpose of an award for general damages (see, for instance, *Reynecke v Mutual & Federal* 1991 3 SA 412 (W) at 428-9). In *Nkomo v President Insurance* 1992 4 C&B A4-82 (W) at A4-87 the court refused to award the costs of providing security.

Accelerated benefits for children: When assessing claims for loss of support it is quite common to find that dependent children have received substantial benefits from the estate of the deceased. When a widow has received an accelerated benefit the deduction is calculated as:
$$A - B \times (100 - \text{contingency percentage}) / 100$$
 where A is the amount inherited (sometimes adjusted for inflation to date of trial), and B is the expectation of receiving that amount at the end of the deceased's lifetime; B is the present value, that is to say is discounted for interest over the relevant period. It is appropriate to reduce B for general contingencies before deducting it from A (see *Groenewald v Snyders* 1966 3 SA 237 (A) at 248E-F item (b)). For a child the notional accrual of item B will normally take place long after the child has become self-supporting. **This consideration suggests that the deduction for acceleration for a child should disregard item B.**

In *Heyns v SA Eagle* 1988 (T) (unreported 6.7.88 case 13468/86) it was ruled that where a child has successfully claimed maintenance from the deceased's estate then that amount is a deductible benefit when assessing damages for loss of support. In this instance item B will commonly have a nil value because an adult child is usually not entitled to maintenance from the parent's estate.

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