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NEWSLETTER

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

Vital statistics:

CAP determination 31 July 2017:	R262366
CPI year-on-year October 2017	4,8%
RSA long bond yield May 2017:	9,3%
Real rate of return (9,3 less 4,8):	4,5%
FNB property index July 2017 real :	-1,0%

Remarriage contingency: *Esterhuizen v RAF* 2017 (4) SA 461 (GP) discusses the factors affecting the deduction for the contingency that the widow may remarry. The Court made the observation that the physical appearance of widow should be ignored. *In casu* the widow had not appeared before the Court. The Court applied a deduction of 27% having regard to “the specific circumstances of this case” (the remarriage table in the *Quantum Yearbook* indicated a deduction of 39%).

Real increases in earnings: Modern South African wage negotiations and agreements generally allow for increases in rates of pay at 1% or 2% per year above the inflation rate. This is something of an anachronism which dates from the substantial real increases in productivity during the latter half of the 20th century which were facilitated by the then new technologies, notably computers, and improvements in the education of the workforce. Nowadays, with the advent of robotics and the prospect of self-driving cars, the digital displacement phenomenon is putting many out of work. A notable South African phenomenon is the automation of mining following the horrors of Marikana. The South African economy would be better served by wage agreements that referred to a productivity index rather than a fictitious real increase that only serves to inflate inflation. The new robotisation will create many new jobs, but these will require additional skills and training. Sadly, such workers are all too often imported from overseas. When I was young my father repeatedly told me that if I did not apply myself to my studies I would end up driving the horse-drawn watercart that sprayed down the dust in our street. It was good advice. The Chinese are getting it right. Maybe we should be sending our select teachers there for guidance and inspiration, and offering mandarin as a subject in the schools, as is now happening in the USA.

Constitutional damages: Recently a 5-year-old child drowned in the cess of a school long-drop toilet. The toilets were soon after replaced by the authorities but without any gesture towards the grieving parents who now sue for compensation being R900000

patrimonial loss plus “constitutional damages”. Claims by parents for patrimonial loss arising from the death of a young child are usually rejected due to the “weight of accumulated contingencies”. “Constitutional damages” are something else. These are damages for infringement of a constitutional right for which the common law does not make provision (such as loss of use). The quantum of such loss needs to be proved by relevant evidence. Such losses should be patrimonial. The court dicta suggest that constitutional damages will not be extended to an additional class of general damages or solatium, or punitive damages USA style. When considering an award for constitutional damages the Court is expected to have regard to the wider financial consequences, such as increased cost to the Road Accident Fund (*Minister of Police v Mboweni* (657/2013) [2014] ZASCA 107 (5 September 2014)). The constitution does not entitle a child to the love and affection of the parents, nor, it seems, do the parents have such entitlement.

Costs of domestic assistant by instalments for RAF matters: There has been a flurry of rulings that the costs of a domestic assistant and other non-medical expenses must be paid by the RAF by lump sum. However, in *Road Accident Fund v Mphirime* (1036/2016) [2017] ZASCA 140 (2 October 2017) the SCA has ruled that “the cost of employment of a domestic assistant to the plaintiff is an expense that the defendant (the RAF) is entitled to pay in terms of an undertaking under s 17(4)(a) of the Road Accident Fund Act 56 of 1996”.

Quantum Yearbook 2017 corrigenda:

Experts:

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Martins v Minister of Police 2013 (6K6) QOD 236 (ECP) should be R40000 and R53000.

Animal - injury by – list should be:

Da Silva v Coetzee 1970 2 QOD 163 (T)	50	3600
Chetty v Minister of Police 1976 2 QOD 601 (AD)	250	10000
Mpinda v Minister of Police 1972 2 QOD 263 (E)	300	19000
Veiera v Van Rensburg 1953 3 SA 647 (T)	190	21000
Mokoena v Minister van Polisie, Qwaqwa, en Andere 1993 4 QOD G3-16 (O)	6000	27000
Jooste NO v Minister of Police and Another 1975 2 QOD 501 (E)	750	34000
Joyce v Venter 1979 3 QOD 19 (Z)	2000	59000
Heynecke v Visagie 1980 3 QOD 102 (W)	2500	64000
Visser v Visser 2012 (4) SA 74 (KZD), 2012 (6G4) QOD 1 (KZP)	70000	98000
Baker v Spielman et Uxor 1960 1 QOD 286 (D)	6000	559000
King v Geldenhuys 1983 3 QOD 379 (C)	45000	778000

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