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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 2018:	R273863
CPI year-on-year September 2018:	4,9%
RSA long bond yield Nov 2018:	9,2%
Real rate of return (9,2 less 4,9):	4,3%
FNB Property Index June 2018 (real):	-0,8%

Even linear real increases: Industrial psychologists are fond of predicting “even linear real increases” for their salary scales. Just precisely what does this mean? Suppose the subject of the prediction is expected to start working in 2019 earning R76000 per year with “even linear real increases” over the next 20 years to R234000 per year. Linear real increases implies $(234000-76000)/20=R7900$ per year real increases before adding inflation. If we assume an inflation rate of 6% per year the R234000 will have become R750470 per year after 20 years $(234000 \times 1.06 \text{ to the power } 20)$. “Even linear real increases” including inflation will be $(750470-76000)/20=R33724$ per year. However, if we stick to “linear” for all roll-ups then the inflation roll up should have been $(234000 \times (1+.06 \times 20))=R514800$ per year and the yearly linear increase including inflation would be R21940 per year, much less than R33724 per year for mixed linear and compound.

Considering the ambiguities, industrial psychologists are requested to explain precisely how to treat the inflation factor when allowing for “even compound real increases”.

Message for the Juta editors of Corbett & Honey (*The Quantum of Damages in Bodily and Fatal Injury cases*): Please gentlemen you are reporting far too many cases on wrongful arrest. There is hardly ever a case on damages for fatal injury (loss of support). We could also do with more cases on: fracture of the jaw; loss of taste and smell; damage to vocal chords and thyroid; damage to lungs; loss of hearing; loss of an eye or eyes; injury by animal; burns; awards to dead persons; unauthorised entry; injury to genitals and anus; loss of pregnancy; poisoning; damages for shock; damages for death of spouse and/or child; damages for rape; damages for infection with AIDS; unconscious human vegetables unaware of their condition; damages for mismanaged baby delivery.

Your headnotes have become swollen with unnecessary detail that could well be omitted. I commend you to study the elegant style of the old headnotes prepared many years ago by John Buchanan, the original editor.

Parts for stepchildren: Quite commonly the husband or wife has children from a

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previous relationship who cohabit the common household. If both parents are working, and one is wrongfully killed, it is arguable that when calculating the claim for damages for loss of support the surviving spouse should be deemed to contribute only to the support of her own children, the children of the deceased being assumed 100% dependent on their father and to receive nil support from their stepmother. Albeit in accordance with the logic of the ruling in *Santam v Fourie* 1997 1 SA 611 (A) this usually does not produce an entirely satisfactory result. What is more it is arguable that when one enters into a marriage involving stepchildren one is tacitly agreeing to contribute to their support. These days a contractual obligation is sufficient to ground a claim for support (*MB v NB* (2008/25274) [2009] ZAGPJHC 76; 2010 (3) SA 220 (GSJ) (25 August 2009); *Thibela v Minister van Wet en Orde* 1995 3 SA 147 (T)). I submit that the preferable and fairest approach is to treat all children as of equal status when applying the joint incomes of the parents. One must never lose sight that the allocation of parts to the family members is but a convenient and approximate substitute for the tedious process of detailed evidence as to the way family income was and would have been applied. It is also relevant that:

"the common law has been developed to recognise that a duty of support can arise, in a given case, from the fact-specific circumstances of a proven relationship from which it is shown that a binding duty of support was assumed by one person in favour of another. Moreover, a culturally imbedded notion of 'family', constituted as being a network of relationships or reciprocal nurture and support, informs the common law's appetite to embrace, as worthy of protection, the assumption of duties of support and the reciprocal right to claim support by persons who are in relationships akin to that of a family." (*JT v Road Accident Fund* 2015 (1) SA 609 (GJ) at 616E; see too Grotius *De jure belli ac pacis* 2.17.14).

STATSSA earnings data: With the assistance of Jaen Beelders of Analytico we have been able to upgrade the earnings data in the Quantum Yearbook by way of the comprehensive surveys done by STATSSA. A notable adjustment has been the substantial increase in our prognosis for lower quartile earnings for unskilled workers (see figures below). The previously very low starting figure was based on very old surveys and figures attached to claims arriving in this office. This increase will have quite an impact on claims because the bottom of the unskilled range is a level widely adopted by industrial psychologists for the expected earnings after an accident victim returns to work:

Quantum Yearbook 2019 records earnings for unskilled worker (all sectors) as:
R20700 – R36300 – R82000 per year.

Quantum Yearbook 2018 recorded comparable earnings for unskilled labourers as:
R8700 - R25500 - R73000 per year.

Prescription holiday: In *Gabuza v Road Accident Fund* (70524/16) [2018] ZAG-PPHC 634 (29 August 2018) the Court confirmed that if the last day of prescription falls on a holiday then the final day for prescription carries over to the next business day.

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