Clientèle LEGAL

Know the LAW

The superior newsletter from Clientèle Legal

Issue No. 29 – 2025

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ACTUAL CLIENTS — TRUE STORY — ACTUAL CASES

"I'm so grateful for Clientèle Legal!"

The divorce rate in South Africa is on the rise. Stats SA's most recent findings revealed a 10.9% increase in divorce rates from the previous year, with the majority coming from first marriages. In 55.3% of cases, children younger than 18 years were affected - 18,850 children in total.

Rebone Ngoatle, actual client

"When I was going through a very traumatic time, a friend reminded me that I could use my Clientèle Legal Plan to secure an uncontested divorce. I contacted Clientèle Legal and they took me through the process. They kept me informed every step of the way. The day before the court hearing the lawyer contacted me to explain the procedure – right down to where I should park and how much cash I needed to bring to pay for the parking. We met 30 minutes before the court proceeding and he briefed me on what questions I should expect; the matter was finalised on the same day. Clientèle Legal are professional and they can help you with your legal matter."

Clientèle Legal's Nomfundo Khumalo, who specialises in divorce cases, advises, "When mediating an uncontested divorce and drafting a divorce settlement agreement that complies with the Divorce Act, you are required to take the best interests of the minor children and their financial needs into account. We will also consider with whom the minor children will live full time with, agree on the other parent's contact/visitation rights, and stipulate their monthly maintenance contribution. We can also assist with joint residence agreements, e.g. where the children live one week with one parent and one week with the other, or whatever contact plan the parents agree on. Once the parents have agreed it is incorporated into the divorce settlement agreement which must be endorsed by the Office of the Family Advocate."

Your Clientèle Legal Plan ensures that you and your loved ones are always protected.

Reference: https://www.statssa.gov.za/?p=17162

Uncontested divorce and family related matters?

Clientèle Legal benefits include assistance with uncontested divorce and advice on family related matters. Clientèle Legal is available for queries on 011 320 3020 and, for after hours emergency queries, on 0860 004 529.

Nomfundo Khumalo, Clientèle Legal

Lawyers Tip

TOP 3 THINGS
TO KNOW

Rules for Retrenchment

1.
Consultation Process & Written Notice

If a company decides to restructure, it cannot simply commence with retrenchments. The company must consult with all affected staff and weigh up their options. And, even before these consultations, under Section 189(3) of the Labour Relations Act, an employer is required to notify employees in writing about all relevant information relating to the proposed retrenchment.

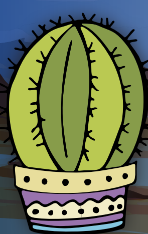
2.
LIFO Rule & Employer's Proof of Action

When deciding who to retrench, a selection criteria must be decided upon. The most commonly used criteria is the "last in first out" (LIFO) principle. Where possible, the employer must make every attempt to include affected employees in the new business structure. Employees may not be made to reapply for previously held positions. Management must be able to defend retrenchment actions by demonstrating that they are not arbitrary and that it has tried all other possible solutions.

3.
Consultation about Severance Packages

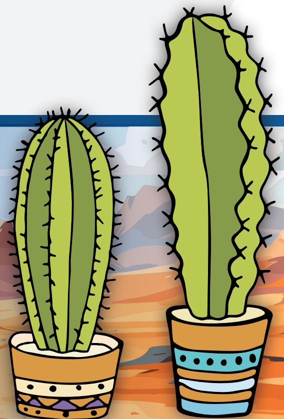
Employers must consult with affected workers to determine a reasonable severance package. The final package is subject to agreement between both parties, but a minimum package can be no less than one week's remuneration for each completed year of service plus notice pay.

STRANGE LAWS
AROUND THE WORLD



Don't cut the Cactus

It's illegal to cut a cactus in Arizona, offenders can be sentenced to 25 years in prison.



Self-Defence… or Murder?

In South Africa we all have a fundamental legal right to protect ourselves from harm. The law permits individuals to use reasonable force to defend themselves, their property, or other people. But what is "reasonable?" At what point is self-defence considered excessive or unjustified, resulting in potential charges of murder?

What constitutes Self-defence in South Africa?

In South African criminal law self-defence (also a common law principle) is essentially the warding off an unlawful attack. Any person may act in self-defence IF they believe they are in imminent danger of harm. However, in order to claim self-defence, a defendant must meet certain criteria including the following:

1. **Imminent Threat:** The threat must be immediate and unavoidable.
2. **Proportionality:** The response to the threat must not exceed the necessary level of force required to protect oneself.
3. **Necessity:** The force must be necessary - there must be no reasonable alternative way to defend oneself.

When Does Self-defence Become Murder?

The key factor is the proportionality of the response. You may only use deadly force in self-defence if you are confronted with an immediate and lethal threat. If the threat is not immediate and/or lethal, responding with deadly force may be seen as using disproportionate force, which can result in charges of murder being brought against the defender. There are four important factors that will be considered by the court in weighing up a self-defence vs murder case:

1. Was excessive force used? The court decides this based on the severity of the threat. If the defendant responded to a minor or non-lethal threat with deadly force, e.g. using a weapon when the attacker was unarmed, it could lead to a charge of murder.
2. Was there failure to retreat? The law doesn't demand that you must retreat in the face of a threat. However, if the defendant had the option of retreating from the situation and chose to use lethal force instead, the response might be judged excessive. If the court determines that the defendant escalated the situation unnecessarily, it could lead to a conviction for murder.
3. Did proportionality and reasonableness apply? The court will examine the incident from every angle, including the nature of the threat, the type of defence used, and the circumstances. If the defendant's response is found to be disproportionate, they may be convicted of manslaughter or murder, depending on the circumstances.
4. What was the role of the accused's mental state? This may tip the scales of justice towards a self-defence or murder ruling. If the accused acted with intent to kill, even in the course of self-defence, it may count as murder. If they caused a death by acting recklessly or negligently, they may face a conviction for manslaughter.

In Summary

South African case law provides several examples of the law punishing the use of excessive force, even when self-defence was claimed. This complex area of law requires examination of all the circumstances around every single case and is ultimately a balancing act. Courts need to be satisfied that the use of lethal force was justifiable, deemed necessary, reasonable and proportionate to the threat that was posed. It is important for individuals to understand the limitations of self-defence to avoid self-defence resulting in criminal liability for murder.

In South Africa, you have the right to defend yourself, but ONLY with proportional and reasonable force. If you believe any of your rights are being violated, ask Clientèle Legal what steps can be taken.

Ref: https://www.gov.za/sites/default/files/gcis_document/201503/act-51-1977s.pdf

Bibliography Ref:

Criminal Procedure Act 51 of 1977, South Africa, S v. Goliath (1982) 1 SA 313 (A), S v. Sibiya (2005) 1 SACR 1 (SCA), Snyman, C.R. (2014). Criminal Law (6th ed.). Durban: LexisNexis. Burchell, J. (2016). Principles of Criminal Law (5th ed.). Cape Town: Juta & Co.

Put an end to bad debt with a **Clientèle Legal Business Plan.**

For a SMME, cash flow is everything. So, when a certain business operator in eMalahleni was refusing to repay a loan, the SMME called Clientèle Legal. Clientèle Legal quickly dealt with the issue and the full amount – just under R98,000 was paid.

Remember: if you have a small or medium sized business it's vital to have professional legal backup and procedures in place. We also assist with debt collection and general legal advice. Let Clientèle Legal draw up your contract and handle your labour matters for you.

Get a FREE tailor-made quote for your business today; visit www.clientele.co.za.

KNOW YOUR LAWYER

Nomfundo Khumalo Clientèle Legal Lawyer.

"It's unfortunate, but life can be unfair, especially in matters of justice. That's why I became a lawyer; I wanted to be among the people who balance the scales of justice, I also wanted to assist those who may not be financially well off to challenge unfairness; at the very least, give them a fighting chance in legal matters.

Being part of Clientèle Legal is an honour. It's not easy for a company to survive as long as Clientèle has – that fact alone makes me proud to work here. I enjoy my work and I've grown immensely as a lawyer. Being a Senior Legal Advisor is challenging but thrilling. Our clients rely on us to help them in very threatening legal situations. So, one has to constantly balance being emotionally mature against remaining objective as a lawyer. God has blessed me with a bright mind, wisdom and good health – that inspires me to put my best foot forward."

Clientèle LEGAL

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If you would like to receive this newsletter send an e-mail to: knowthelaw@clientelelegal.co.za (please include your name and policy number)

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For more information call: 011 320 3000

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