

## PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

### **SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #31**

#### **1. Legal Quotes**

"Those terrifying verbal jungles called laws are simply such directives, accumulated, codified and systematized through the centuries." [S I Hayakawa]

"The houses of lawyers are roofed with the skins of litigants." [Welsh proverb]

"The United States is a nation of laws: badly written and randomly enforced." [Frank Zappa]

#### **2. Overheard in court**

Q: So, the date of the conception (of the baby) was August 8th?

A: Yes.

Q: And what were you doing at the time?

#### **3. Inspiring quotes**

"Don't judge each day by the harvest you reap, but by the seeds that you plant." [Robert Louis Stevenson]

"The only person you are destined to become is the person you decide to be." [Ralph Waldo Emerson]

"For a gallant spirit there can never be defeat." [Wallis Simpson]

#### **4 Cancellation of Contracts and the Consumer Protection Act**

Consumers no longer sign documents or enter into agreements at their peril as the **Consumer Protection Act** provides them with the *right to cancel an agreement under the following circumstances:*

SECTION	CIRCUMSTANCES IN WHICH CANCELLATION PERMITTED	TIME LIMIT	PENALTY
7(2)	Franchise agreements	10 business days of signing	None
14(2)(b)(i)	Fixed-term agreements (like leases, gym contracts, cell phone contracts and armed response/security contracts)	20 business days' notice	14(3)(b)(1) Regulations 5(2)&(3)
17(2)	Advance booking/ reservation/ order  (like reservation of wedding venues)	No time limit indicated	17(4)
16	Direct Marketing (such as products marketed to you from call centres)	5 business days of signing	20(4)(a) Return to supplier at the consumer's risk & expense
19(6)(c)  & 20(2)&(4)	Goods delivered other than as agreed ITO time/ quality/ type or  Not fit for intended purpose communicated to supplier	Per s.21;  10 business days of delivery	20(4)(a) Return to supplier at the supplier's risk & expense  20(6) May charge for

			use
54(2)(b)	Service of poor quality	Not specified	None
56(2)(b)	Goods defective/not durable or Not reasonably suited for generally intended purpose	6 months from delivery	56(2) None Return to supplier without penalty & at supplier's risk & expense
62(4)	Lay By	Before paying in full or within 60 business days after anticipated date of completion	Regulation 34(1)

A supplier may cancel an agreement under the following circumstances:

SECTION	CIRCUMSTANCES IN WHICH CANCELLATION PERMITTED	TIME LIMIT
14(2)(b)(ii)	Fixed-term agreements	20 business days after giving notice of breach of contract to consumer
64(3)(a)	Prepaid services and access to service facilities	Supplier must provide at least 40 business days written notice before the intended date of closure

The rules relating to cancellation are straight forward but the calculation of permissible charges for damages is more problematic.

Care has to be taken to ensure that undue hardship is not imposed on the defaulting party and that losses are limited to those that flow from the breach and are not too remote. In deciding what charge is fair, the relevant consideration is whether the charge is out of proportion to the harm suffered by the innocent party, in which case it may be reduced to the extent that it considers fair.

This can be assessed in three ways:

by looking at comparable situations where the desired result was achieved;

- by looking at the size of this penalty and the penalties in general in relation to the income and expenditure of the defendant; and
- by exercising one's sense of fairness and justice.

**Where a breach of contract has occurred, the innocent party must take reasonable positive steps to mitigate or prevent the occurrence of losses, failing which his or her claim may be reduced or eliminated.**

Any industry guidelines to suppliers as to appropriate cancellation policies should include:

- **That the cancellation policy be appropriate to the type of service offered**, with regard to the likelihood of being able to, with diligence, rebook the venue/ service;
- **That any deposit taken be fair and reasonable and proportionate to the loss** that a supplier is likely to suffer if the event/ service is cancelled;
- **That provision is made for a stepped scale of forfeiture of a percentage of the deposit in proportion to the length of notice given**, subject to the proviso that, in the event of the venue/ service being rebooked, the consumer will only be charged an administrative fee based on actual costs.

**I am temporarily available on cell number 063 263**

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All newsletters can be obtained on our website: [www.sonnenberg.co.za](http://www.sonnenberg.co.za).



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