

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER 63

1. Legal Quotes

"The strictest law sometimes becomes the severest injustice." [Benjamin Franklin]

"It's possible for one never to transgress a single law and still be a bastard." [Hermann Hesse]

"When cops are on the job they love lawyers like lions love hyenas, only minus the mutual respect." [Reed Farrel Coleman]

2. Legal short

After an electrician finished repairing some faulty wiring in an attorney's home he handed him the bill. "Three thousand rand! For an hour's work?" cried the attorney, "That's ridiculous! I'm an attorney and I don't make that much." "Funny," replied the electrician, "when I was an attorney, I didn't either!"

3. Inspiring quotes

"You have to be odd to be number one." [Dr Seuss]

"To thrive in life you need three bones: A wishbone, a backbone and a funny bone." [Reba McEntire]

"Success is the ability to go from failure to failure without losing your enthusiasm." [Winston Churchill]

4. Restraint of trade agreements

A Restraint of Trade agreement is a contract, entered into between an employer and employee, which restricts the employee's future business activities, should he or she leave the company. Restraints are **usually included in employment contracts** when the employee joins the business.

Restraints are, however, governed by the law of contract and not labour law.

The rationale behind a Restraint of Trade is the **protection of the employer's confidential information, trade secrets, goodwill and sensitive business information relating to the company.** Such information is viewed as being of a classified nature; should this leak to competitors it may have severe trade repercussions for the employer.

To be upheld by the courts, a restraint agreement **must be reasonable, justifiably necessary to protect the interests of the company, and the interests which the company seeks to protect must be clearly identifiable.**

Our courts have held that a restraint of trade agreement is enforceable unless it is shown to be unreasonable - *and the onus of showing that it is unreasonable rests upon the person alleging it and wishing to get out of the restraint.*

An employer seeking to enforce a restraint agreement does not have to show that the employee has utilised the confidential information, but merely that the employee could do so.

There are **two principal policy considerations** to be considered **in determining the reasonableness** of a restraint:

1. public interest, which requires that parties should comply with their contractual obligations; and
2. the interests of the contracting parties (the employer has the right to protect its confidential information vs the right of the employee to conduct business and earn a living).

There is no such thing as a standard restraint of trade; restraints vary from business to business.

In determining what might be reasonable for both parties, one should consider the nature of the business, the area where the employer conducts its business and the time period of the proposed restraint. Geographical and time limitations are important factors to evaluate.

Employers would be wise to consult an attorney who has experience in drafting restraint agreements, in order to ensure, as far as possible, that any restraint clause in contracts of employment will stand up when tested in Court.

Irrespective of whether a court enforces or overturns a restraint of trade agreement, it is unlawful in common law for an employee to take an employer's confidential information and use it to compete with the employer.

I am available on 083-2515451 or fritz@sonnenberg.co.za

All newsletters can be obtained on our website: www.sonnenberg.co.za.

We are also a licensed estate agency: Sonnenberg PropertyServices (Pty) Ltd 2015 Fidelity Fund Certificate Number [2015122793](#).



FRITZ SONNENBERG | Legal Consultant
Mobile: 083 251 5451 | Email: Fritz@sonnenberg.co.za | Skype: fritzsonnenberg

