

KNOW_{the} LAW

The superior newsletter from Clientèle Legal

AS SEEN ON TV

All cases featured on Clientèle Legal ads are true stories of actual clients.



Loraine Muthelo – Actual client



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MOTOR VEHICLE ACCIDENT? YOU MIGHT NEED A LAWYER

I was stationary at a traffic light when another car hit me from behind,” recalls Loraine Muthelo. ‘I was driving my husband’s car at the time and the car was not insured. Our car was damaged beyond repair.” Muthelo was hospitalized and her physical injuries were minor, but the financial damage seemed insurmountable. Not only did they need to buy a new car, but the other party refused to pay. Initially, the other party claimed he did not know what had happened in the accident, because he had blacked out and could not remember. Then, he changed his version of events to say that Muthelo turned right in front of him, so that is why the insurance company refused to pay out. “It was a legal nightmare,” Muthelo says. “Luckily for me, my husband had a Clientèle Legal policy and I was covered on the plan.”

Tshifhiwa Moseta from Clientèle Legal says it is important to know that, even if you do not have car insurance, you still retain legal rights in terms of claiming from the third party’s insurance, but it can be more difficult. Moseta further explains that Muthelo was in a difficult position, as the law places a heavy burden on drivers turning right. “If the other party’s version of events was to be believed, the Muthelo’s

might have lost the case. However, the evidence supported Mrs Muthelo’s claim that she was hit from behind.”

In spite of the evidence, the other party’s insurance refused to cooperate. “We handed the matter over to external specialists, as we believed our client had good prospects of success. They negotiated a settlement of R156,700.” Muthelo was delighted. “The outcome exceeded our expectations. We were overjoyed.”

Moseta gives the following pointers in terms of this case. Firstly, in terms of the law, it is presumed the person who collides into the rear of another person’s motor vehicle is the guilty party. Secondly, motor vehicle insurance matters can be settled without pursuing legal action, as long as both parties agree. Thirdly, get your paperwork in order for your claim to be settled as quickly as possible. This would include an accident report, ID documents, witness statements, vehicle registration papers and copy of driver’s license.

Please note: Claiming via legal processes can be long and tedious especially if no settlement can be reached.



Lawyer’s Tip

‘Car accidents can happen 24 hours a day.
That’s why we are available 24 hours a day.’

Tshifhiwa Moseta (Senior Legal Advisor)



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THE TOP 3 THINGS YOU SHOULD KNOW

What can I say on social media without being defamatory?



1

Imagine everything you say on social media is on the front page of the newspaper.

Whether you are speaking to Facebook friends or your Twitter network remember that anything said to a third party, whether in the media or in the elevator can be considered defamatory if the person feels their personality rights have been impaired intentionally or unlawfully.



2

It is irrelevant whether 3 or 3,000 people heard/read/saw your comment.

If it can be shown that your comment/statement damaged another's reputation, you can be held legally liable.



3

The law counts even if you are not the original poster of the statement.

You can be held liable just by re-posting or sharing a defamatory post, if you have not taken steps to distance yourself from the content.

THE
**LIGHTER
SIDE**

HEARD IN COURT

"In what way does your illness affect your memory?"

"I forget."

"You forget? Can you give us an example of something you've forgotten?"





Shop right when looking for a loan!

Shoprite recently made news when the NCR referred it to the National Credit Tribunal (NCT) for reckless lending and requested an order for Shoprite to refund consumers.

Shoprite Investments Ltd and Shoprite Insurance Company Ltd ("Shoprite") who sold credit insurance to consumers as an addition to their products without properly evaluating their financial status was found to have provided credit recklessly.

The case is important to consumers and credit providers, as it is very easy to default on either side.

That is the very reason why the National Credit Act set out very specific guidelines for when a credit agreement is 'reckless.' In more popular terms, a credit agreement can refer to a loan or any agreement where a client agrees to pay for a service or financial product at a future date.

In terms of Section 81(2) of the National Credit Act it is reckless, and therefore illegal if the lender did not take proper steps, eg a credit check, to confirm whether the person borrowing the money will be able to pay it back. This is crucial in the process, because if the person taking the loan cannot pay back the loan, he or she will just circle deeper into debt, which is already a big problem in our country. According to the Act, the lender has to assess the person taking the debt's financial prospects and understand their history in terms of debt repayment.

The lender also has to be honest about whether the person taking the debt reasonably understood the agreement. This is crucial, as many people in South Africa do not understand the small print and it is often not explained to them properly. A further problem arises when loans are granted to first-time borrowers, who have not yet had exposure to the process of loans payback schedules.

In another case making headlines, a consumer took action against Lewis for charging a 60 year old gardener R17,955 for a R5,999 washing machine. The employer of the gardener describes the gardener as 'a very humble, timid man with limited literacy' and debt experts slammed Lewis's behavior, accusing Lewis of 'reckless lending' on the basis that the man did not fully understand the contract and did not have the means to pay back the money.

Lewis initially viciously defended the charge of reckless lending, but backed down a month later, due to bad publicity. The loan was cancelled and the gardener bought a R3,000 twin tub instead.

In another matter ABSA Bank attempted to recover approximately

R1,700,000 from a couple who were 60 and 66 years old respectively, by requesting the court to allow the bank to sell their fixed property for the purpose of recovering the amount due to ABSA Bank.

ABSA Bank, over a number of years advanced certain amounts to the couple for bridging finance, under circumstances where it have been impossible for them to repay such amounts, which totalled, approximately R1,700,000. ABSA Bank disregarded the advanced age of the couple at the time of granting of the loans, as well as the fact that they were pensioners. ABSA largely considered the income of their daughter as surety in approving the loan and relied one-sidedly on the security value of the fixed property, being the residential property belonging to the couple, in granting the loans. Judgement against the couple would have rendered them homeless.

Under the circumstances, ABSA's claim was dismissed with costs. The couples' counterclaim for an order declaring the loan as reckless credit and for a forfeiture order against ABSA, were granted. ABSA was further ordered to cancel the bonds over the couple's property with immediate effect.

Clientèle Legal encourages all consumers to have their lawyer check out credit agreements and to not be afraid to challenge lenders or to enforce their rights.

CLIENTÈLE LOANS IS A RESPONSIBLE LENDER



The Clientèle Loans division is a reputable and responsible lender. We grant loans only to people who can afford them and need it to advance their lives. We do this, not just because it is the law, but because we have respect for our clients and want them to have a financially safer future.

SUPERIOR LEGAL SERVICES IN ACTION



Clientèle
LEGAL

**Professional
legal
services
for your
business**

Visit our website at
www.clientelelegal.co.za

Running a small or medium sized business takes courage, skill and determination. Plus, legal fees in South Africa are expensive. Don't let legal matters impact your business negatively. The Clientèle Legal Business Plan is there to protect, guide and assist your business in managing legal risks.



LABOUR MATTERS

Disciplinary Hearings,
CCMA referrals, Bargaining Council

COMMERCIAL CONTRACTS

Purchase and Sale Agreements, Terms & Conditions,
Independent Contractor Agreements
and Service Level Agreements

CIVIL MATTERS

Consumer Protection Act, Companies Act
Defending and Issuing of Summons

DEBT COLLECTION

Letters of Demand, Arranging Payment Plans and
Issuing of Summons against business debtors

Terms and conditions apply

“Clientèle legal business solved my business’s labour issues”

Jacobus Jooste of JP Media was in a difficult position when he encountered labour issues in his business.

“It was with a heavy heart that I decided to dismiss two employees. It is an unpleasant situation for both employer and employee and I wanted it to be dealt with correctly. That is why I called my legal team at Clientèle Legal. They appointed external attorneys who chaired the hearings and assisted with the dismissal letters. The matter was dealt with professionally and quickly. I am very happy with the service.”

Jaco Jooste from J&R Media

Actual client



Clientèle Legal contact information

Tel: 0860 004 529 • Fax: 011 320 3133 • Email: lawyers@clientele.co.za • Website: www.clientelelegal.co.za • Mobisite: www.clientelelegal.mobi

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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