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### Your Body Corporate and Arrear Levies: To Sequestrate or Not To Sequestrate?

As a Body Corporate trustee you will understand how important it is to collect arrear levies from defaulting owners. And of course as a section owner you have a personal stake in the process. When normal debt collection processes fail, what do you do?

Sometimes it makes sense to apply for the debtor's sequestration (just the threat of that has been known to scare even the hardest of debtors into paying up!) - but beware the 'danger of contribution'.

We discuss what that is, and analyse a case in which a Body Corporate must (adding insult to injury) pay into the sequestration costs because it was the 'petitioning creditor'.

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**NOTE FOR ATTORNEYS:** The judgment in *First Rand Bank Limited v Master of the High Court (Pretoria) and Others (53071/2016) [2018] ZAGPPHC 236* can be downloaded from [SAFLII](#). For the sake of brevity and simplicity, no mention is made in the article of the fact that the banks relied on their securities for satisfaction of their claims.

The Insolvency Act, Act 24 of 1936 can be downloaded from the University of Pretoria's "Laws of South Africa" website – find it under "Liquidation and Insolvency".

### Suing Your Security Company: The Case of a Burgled Butchery

With crime levels as they are, more and more of us rely on private security companies to protect us from the criminal elements that besiege us both at home and at work.



What happens though when your security company lets you down? Can you sue?

We discuss a case in which a butchery was burgled by a safe-cracking gang armed with angle grinders. The Court had to decide whether the security company's response to an alarm activation in the butchery's roof was negligent or not, and if so whether the exemption clauses in the company's contract protected it from liability.



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**NOTE FOR ATTORNEYS:** The judgment in *M J Repapis Enterprises CC t/a Inyama Rama Butchery v Red Alert (Pty) Ltd (1879/2014) [2018] ZAECGHC 42* is on [SAFLII](#). For the sake of simplicity the article refers to the sole member of the CC which owns the butchery as “the business owner” – corporate ownership might have been relevant had the CPA been raised as an issue in this case.

For a 2014 Constitutional Court decision on another claim against a security company see *Loureiro and Others v Invula Quality Protection (Pty) Ltd (CCT 40/13) [2014] ZACC 4; 2014 (5) BCLR 511 (CC); 2014 (3) SA 394 (CC)* on [SAFLII](#).

The Consumer Protection Act, Act 68 of 2008 (see section 49 in particular) can be downloaded from the University of Pretoria's “Laws of South Africa” [website](#) – find it under “Sale and Lease”.



### Property Scams – Beware (Cyber) Wolves in Sheep's Clothing!

“Wolves in sheep's clothing” have been around since the dawn of civilization and in today's world they lurk in every corner of the Internet, lying in wait for the unwary.

You become a prime target when you buy or sell property – the rich pickings on offer when property is involved make sure of that.

So let's have a look at how these cyber-scams work, at how you can protect yourself from them and at how, no matter how much security the transferring attorneys may have on their side, you need to be constantly on guard so that the “the weakest link” is never you ...

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**NOTE FOR ATTORNEYS:** Suggested reading –

- “LSSA Cybercrime advisory” on [GhostDigest](#). **Note in particular the recommendation re wording in all your emails and other communications to clients** alerting them to the dangers of “Business eMail Compromises”.
- “Lawyers hit so hard by cybercrime in South Africa insurance refuses to cover them” on [My Broadband](#),
- Risk Alert 1/2016 (exclusion from cover of liability arising out of cybercrime) on the [LSSA website](#),
- The Law Society of South Africa's “Scam Alert” advisory downloadable from its [website](#),
- “Scam hooks lawyer, but owner pays” on [BusinessLive](#),
- “Here's how cyber criminals are targeting attorneys in scams to steal cash” on [Fin24](#), and
- “Cyberscam targeting conveyancers” on [GhostDigest](#) (follow the links to “How lawyers have become the targets of scamsters” by Carmel Rickard on [LegalBrief](#), and to the judgment in *Lochner v Schaefer Incorporated and Others (3518/16) [2017] ZAECPEHC 4* on [SAFLII](#) in which the High Court held that negligence has to be proved for a claim against the attorney to succeed).

### Lending Money Repayable “On Demand”: Beware Prescription!

Making a loan repayable “on demand” is common amongst family members; think for example of parents making a loan to their student daughter, or of her lending money to a parent in need. It's also used for loans between related businesses.

But what does “on demand” really mean? Does it mean that the loan is made on a “never-never” basis, or that the money is due to you from Day 1 but you can choose when to reclaim it? And when does prescription start its “deadly trudge” towards making your loan



irrecoverable?

A Constitutional Court judgment illustrates...



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**NOTE FOR ATTORNEYS:** The judgment in *Trinity Asset Management (Pty) Limited v Grindstone Investments 132 (Pty) Limited* (CCCT248/16) [2017] ZACC 32; 2017 (12) BCLR 1562 (CC); 2018 (1) SA 94 (CC) is on SAFLII.



### Your Website of the Month: What's Your New Tax Return Deadline?

SARS has announced new deadlines for the 2018 Tax Season. But do you even need to file an income tax return? If you do, what's your deadline? Are you a provisional tax payer? Are you struggling to register on eFiling?

Find the answers to all these questions and more on SARS' "Tax Season 2018 For Individuals" page [here](#), but with this word of warning – even if you aren't technically required to lodge a return, make sure you aren't losing out on something by not doing so, like a tax refund or the ability to prove your "Tax Compliance Status". Remember also that when you're dealing with tax, the cost of getting anything wrong is high, so don't be "Penny Wise, Pound Foolish" - seek professional advice and assistance in the slightest doubt!



**NOTE FOR ATTORNEYS:** No notes for this article.

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