

## UNDERSTANDING LEGALESE



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The diversity of South African culture can be found in our legal system, which is based on the Roman Dutch legal principles and adjusted by the inclusion of English law.

Although South African law is still evolving, we still find Roman Dutch terminology in modern legal documents probably because they sum up a modern legal position in one or two words. This terminology is useful to a legal practitioner but confusing to the general public.

The National Credit Act No 34 of 2005 (NCA) and the Consumer Protection Act No 68 of 2008 (CPA) both make it a legal requirement for credit agreements and service agreements to be drafted in plain language which is easily understood.

However, in spite of most agreements now being drafted

in plain language, the Latin and Dutch phrases are still present.

I recently went through an offer to purchase (purchase and sale agreement) and found that there were still Roman Dutch terms being used. I thought that it would be useful to analyse these phrases.

Right from the start, I found the term *domicilium*. This word literally means service address but the importance of this address is that the address you nominate will be used for the service of official legal documents. As long as they are delivered to the address you nominate, the courts can accept that the legal documents were delivered; irrespective of whether you actually received them or not.

The next term I found was *mora*, which is Latin for default. However, this term really means that if you are in default you will have to pay penalty interest to the innocent party. Usually, a party to a contract, who is causing the performance of the contract to be delayed, will be advised in writing that they are in default and causing the delay. From that point forward until such time as the delay has been resolved, they

will have to pay an additional amount of interest over and above the purchase price.

We often hear of goods being sold “*voetstoots*”, which is an old Dutch term that means the goods are sold without any guarantees to the condition thereof. The purchaser takes delivery of the goods as is and has no claim against the seller if he finds the goods to be defective.

The above three phrases seem to be the only terminology from our Roman Dutch legal system that are still commonly found in purchase and sale agreements. The purchaser needs to be aware of these terms and their full legal meaning before committing to a written contract.

In this regard, the old expression *caveat subscriptor* comes to mind, which loosely translated means that the signer must beware. The legal implications are however far reaching as this principle prohibits a signatory to a contract claiming that he did not properly read and understand the agreement before signing it. The party to the agreement will nevertheless be bound because their signature is clear proof that they read and understood the

contract before signing it.

### Leases

To round off, there is another interesting legal principle, which is based on a Dutch term “*huurgraatvoorloop*” that applies to leases.

In essence, this principle prohibits a lease being cancelled by virtue of the leased property being sold.

The legal effect is that the lease agreement simply continues with the purchaser who will become the tenant’s new landlord on the same terms and conditions that were contained in the lease prior to the sale, hence the term *huurgraatvoorloop*.

A couple of years ago I would probably have had to prepare a three page article to deal with all the Roman Dutch terms contained in our legal documents but with the introduction of the NCA and CPA the legalese have been drastically reduced and only a handful are still found in modern legal documents. ■

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“**About Schwartz**

Vaughan Schwartz is a practicing attorney and a conveyancer. He is admitted to practice in the High Court. Schwartz took an unconventional route to becoming an attorney. He started his professional career with the South African Police Force, firstly as a dog handler and later as a commercial crime detective.

Schwartz obtained his law degree through part time studies at UNISA. He became a partner in the law firm De Villiers, Evans and Petit whereafter he started his own law firm. He is now the main partner at Uys Matyeka Schwartz Attorneys, widely known as UMS Attorneys, which is based in Morningside, Durban with an office in Johannesburg. The practice is a commercial firm focusing on civil litigation and conveyancing.

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## PARTNERS FOR POSSIBILITY

The need to develop quality schools in South Africa is highly apparent. While a small percentage of South African schools operate in accordance with global best practice standards the vast majority do not. Clearly the performance of many schools is abysmal as the annual matric pass rates testify.

Buhlebemfundo Secondary School in Kwadabeka has recently benefited from a unique partnership between its principal Bonginkosi Kati and business coach Kerry Jones. One of the goals set resulted in its 2015 matric students obtaining a 75% pass rate, as opposed to the 55% pass rate which beginning of year exams indicated they were heading for!

Partners for Possibility (PfP) is a far reaching flagship project of a NGO Symphonia for South Africa that is slowly transforming the schools in which it operates. The aim is to change one school at a time from within rather than wait for outside intervention. Louise van Rhyn is the founder of Symphonia for South Africa who says, “Let’s start thinking like co-owners of this country and get actively involved in creating

our future. We can’t wait for government or others to do this.”

Research has shown that a strong leader is pivotal for any meaningful change to occur. Through the PfP programme, principals are being empowered to become change leaders in their schools and communities. While some principals have the benefit of extensive knowledge and support through committees and parent bodies, many are not equipped to cope with the range of managerial tasks expected of them. These tasks include managing financial budgets, human resources, child welfare, buildings and maintenance as well as education policy and requirements to name but a few aspects of their daily duties.

In contrast, experienced business leaders have acquired the practical skills and knowledge required to lead organisational change. The PfP programme enables these business leaders to share what they have learnt with school principals in a one-on-one partnership to provoke change. However, this is a not a one way encounter, nor do the business leaders impose change on the school. It is a win-win situation for all involved. In participating in the programme,

business leaders and their school principal-partners receive world class leadership training and are supported by a professional business coach. The training programme is accredited by the University of the Western Cape.

During the process, business leaders engage in active citizenship and are provided a unique insight into the many challenges of running a school as well as a new understanding of the South African socio-economic context.

In addition, the programme aims to develop the school management team and engage with the community of parents and other citizens around the schools as key partners and potential resources to support change at the school.

PfP has been able to support 390 principals and these numbers are increasing. Many major South African businesses have joined in the programme and are proud to see their own business leaders and the schools that they partner with grow while raising the standard of education offered. ■

Business leaders who are interested in the programme can contact Partners for Possibility at [pfp@symphonia.net](mailto:pfp@symphonia.net).



PfP Community Building Workshop : Bonginkosi Kati (Principal), Buyi Meyiwa (Deputy), Kerry Jones (Business Partner – Coach) Dan Ntinga (SGB). This partnership is sponsored by Engen and Otto Volek Engen Garage (local businessman Andrew Kramer)



Extreme exam preparation coaching for 2015 matrics at Buhlebemfundo with Kerry Jones