

**EXECUTIVE SUMMARY**

Welcome to this month's eFile. In this issue, we look at some recent significant court decisions and their impact on common business operations.

As always, more detailed versions of each of these articles can be found on [our Web site](#).

## SCA CONFIRMS ASA HAS NO JURISDICTION OVER NON-MEMBERS

Although the Advertising Standards Authority cannot exercise jurisdiction over anyone who is not a member of their organisation, a recent appeal has illustrated that they may still hold some power in regulating advertising in South Africa. This is positive news for consumers, who are directly

impacted by the untruths communicated in false advertising.

Historically, the ASA has had the power to self-regulate advertising in favour of consumers. It is not a statutory body or government agency, but an independent body, comprising members from large advertising companies and media. This gives it little authority over its members and broadcasters under the Electronic Communications Act. The appeal saw the Supreme Court of Appeal (SCA) overturn a High Court decision that had rendered the ASA powerless. The matter in question was a settlement between the ASA and a company called Herbox (Pty) Ltd.

Click here to [read more](#).

---

## INSOURCING DOES NOT AUTOMATICALLY TRIGGER EMPLOYEE TRANSFER OBLIGATIONS

South Africa's recent protests across tertiary institutions demanding the insourcing of services such as cleaning and security has sparked an interesting conversation around what conditions trigger section 197 of the Labour Relations Act.

In terms of section 197 of the Labour Relations Act, a company that takes over a business as a going concern is mandated to retain the old business' employees on the same terms under which they were employed before the transfer. In this instance, 'transfer' is broadly interpreted as including both the purchase and sale of a defined business entity, as well as the termination of an outsourcing arrangement. However, as the case of insourcing at tertiary institutions has illustrated, there are several factors to be considered when assessing whether the provisions of section 197 are triggered or not.

Click here to [read more](#).

---

The eFiles is a periodic newsletter which is distributed free of charge to anyone who wishes to receive articles on legal issues relating to our fields of practice. Please e-mail any comments or suggestions to [neil@harty.law](mailto:neil@harty.law).

To subscribe, e-mail [efiles@harty.law](mailto:efiles@harty.law) with "Subscribe" as the subject. To unsubscribe, send an e-mail with "Unsubscribe" as the subject.

This newsletter is for educational purposes only and must not be considered as legal advice. Your individual situation may not fit the generalisations discussed. Only your attorney can evaluate and advise you on your individual situation.

Except as provided below, you may feel free to forward, distribute and copy this eFile as long as you distribute and copy it without any changes and you include all headers and other identifying information. You may not, however, copy it to a Web site without our prior written consent.

If you would like information about obtaining legal services from Harty Rushmere, you can contact Neil Harty at +27(0)11 884-0792 or visit our Web site at [www.harty.law](http://www.harty.law). If you would like an attorney from Harty Rushmere to give a presentation on this topic, please call for information.