

Learning Unit 12: Legal Costs



learning outcomes

Learning Outcomes

Upon completion of this learning unit, it is expected that you will be able to:

- Understand and provide definitions for terminology.
- List who we insure under legal costs.
- Describe what we insure under legal costs
- Identify what we do not insure (exclusions) under legal costs.
- Identify the underwriting rules relevant to the insurance of legal costs.



Introduction

Many people only see a lawyer after they are confronted with a problem that requires legal advice. However, it is best to be proactive about getting legal advice in order to prevent legal problems.

Furthermore, most people cannot simply afford the costs associated with taking legal action. Therefore, having legal cover can be invaluable, as this assists in meeting the high costs associated with legal fees and the related court cases.

Fundamentally, legal costs are the fees and charges to be paid for legal assistance provided by a lawyer. This includes fees charged for time spent on a legal matter.

Being covered for such a legal event takes away much of the related stress that the insured may experience and it allows for more focussed thinking and decision-making. This learning unit deals with the section of the policy aligned to legal cost cover.

12.1 Definitions

You have already encountered some of these definitions. They provide a clear description of whom and what is covered under the legal costs section for easy reference. It also provides definitions for terminology which is not necessarily common in the insurance field. There is space for you to add any further terms and their definitions.

Word or phrase used	Definition and description
you,	Refers to the policyholder and anyone we insure under this section.
battery	The threat of attack on another person followed by actual attack, which need amount only to touching with hostile intent.
civil law	<p>Civil law is the set of rules for your private relationships with other parties.</p> <p>The state does not take sides in a dispute between private people.</p> <p>Examples of what civil law deals with are</p> <ul style="list-style-type: none"> • Marriage and divorce; • If someone owes you money; • Rent agreements; • Evictions; • Damage to property; • Injuries to people; • Disputes over a hire purchase agreement.

Word or phrase used	Definition and description
defamation	False statements to third parties about you that harm your reputation. When the communication is in writing, it is termed "libel". If made via the spoken word, the correct term is "slander".
legal costs	The costs the insured would legally be responsible to pay.
litigation	The process of taking a case through court. The litigation or legal process is most common in civil lawsuits. In litigation, there is a plaintiff (one who brings the charge) and a defendant (one against whom the charge is brought).

12.2 Who we insure

We only insure the following people if named in the schedule:

- The policyholder;
- Members of the policyholder's family who live with them.

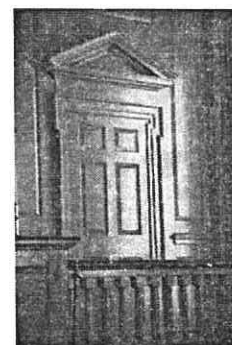
Even though an individual person is named in the policy schedule, there are times when a family is relatively large and extended family members, such as parents or grandparents, who live with the policyholder on a permanent basis, need to be included in the cover provided. For this reason, the definition is extended to include anyone specifically insured under this section.

12.3 What we insure

Before we look at the cover afforded, we need to be clear on a few terms relevant to this section.



Civil litigation is a lawsuit that can be undertaken by individuals or a company/s seeking to reclaim what is owed to them.



This section of the policy would cover the costs incurred for the legal representation needed to prepare the case for court. The insurer will compensate the insured for legal costs that the insurer has approved in writing, relating to:

- A civil court case by the insured;
- A civil court case against the insured.
- Defending criminal charges against the insured.



In a **criminal case** the state prosecutes the accused person for committing a crime or breaking the law. Examples of different crimes and breaking the law are rape, public violence, assault, theft and trespassing.



Should the insured have criminal charges brought against him/her; the costs involved for the legal representation will be covered in terms of this section of the policy.

12.4 What we do not insure (exclusions)

In terms of the policy wording under this section there are several instances where compensation will not take place. These are described below.

- Any legal action where there is no reasonable prospect of success; (The insurers reserve the right not to pursue litigation where they believe there is no reasonable chance of success.)
- Any legal action that is caused in any way by:
 - the insured's job, business, profession or any other activity that the insured is paid for; (Employment is a contract between two parties, one being the employer and the other being the employee. In a commercial setting, the employer performs a productive activity, generally with the intention of creating profits and the employee contributes labour to the enterprise, usually in return for payment of wages.)



A **business** is an enterprise that a client owns or manages. A client may own or manage more than one business. A business may have more than one client involved in it. Cases may involve businesses or may involve the establishment of a business.

The intention of the Legal Costs policy is to cover legal costs sustained in a personal capacity and mainly not to cover business-related legal costs.

- Owning or using a vehicle, watercraft of any type, or aircraft;
(This exclusion confirms that any legal costs that would incur as a result of the ownership or use of any motor vehicle, watercraft of any type or aircraft would not be covered in terms of this policy section.)
- Any action that is dishonest, violent or indecent



Dishonest is a term which in common usage may be defined as the act of being dishonest; to act without honesty; a lack of integrity; to cheat; to lie or be deliberately deceptive; to be knavish, deceitful, corrupt or untrustworthy; charlatanism or quackery.



Dishonesty in law is more complex and has been subject to a number of incomplete and unsatisfactory definitions. This is because there is such a variety of circumstances in which dishonesty may occur that creating an overarching definition is virtually impossible. The decision of whether a particular action or set of actions is dishonest remains separate from the issue of moral justification.

The Court of Appeals holds that dishonesty is an element of *mens rea* (Latin term for "guilty mind"). This refers to a state of mind that a test can be applied to, which "looks into the mind" of the person concerned and establishes what he was thinking. The test is twofold:

1. Were the person's actions honest according to the standards of reasonable and honest people? If a judge or magistrate decides that they were, then the defendant's claim to be honest would be credible, but if the court decides that the actions were dishonest, there is a further question which needs to be answered:
2. Did the person concerned believe that what he/she did was honest at the time?



Violence refers to acts of aggression and abuse which cause, or intend to cause, criminal injury or harm to persons and, to a lesser extent, animals and property.

Examples of some forms of violence identified and condemned by various legal entities are

- Any form of abuse,
- Aggravated assault ,
- Assault and battery,
- Cruelty to animals,
- Domestic violence,
- Murder,
- Property damage,
- Rape.



Indecency means the quality of being indecent or an indecent or improper act.

Indecency can be defined as:

- Language or material that, in context, depicts or describes, in terms blatantly offensive as measured by current community standards for the broadcast medium;
- Exposure of sexual or excretory activities or organs.

Public indecency can be defined as unlawfully, intentionally and publicly performing an act which tends to corrupt the morals of others, or which outrages the public sense of decency.

- Subsidence, which is the gradual sinking of land;
(The insurer will not pay the legal costs incurred due to actions lodged as a result of subsidence if it is specifically excluded in terms of the policy wording.)
- Divorce, maintenance, custody, guardianship, curatorship or any similar Proceedings;



Custody means providing a home, feeding and supporting, looking after the day-to-day needs and educating the children. Child custody and guardianship are the legal terms used to describe the legal and practical relationship between a parent and child.



Curatorship is the power given by authority of law, to one or more persons allowing them to administer the property of an individual who is unable to take care of his own estate and affairs. This can be either on account of the person’s absence without an authorised agent, or as a result of age or state of mind.

- o Any proceedings related to intellectual property, such as copyright, trademarks, trade names, patents and other similar issues;



In order to easily identify these, it is important to understand the definitions of each.

intellectual property	This refers to creations of the mind. In exercising your creativity, you will most likely generate concepts which are new and which are valuable to you (or your company). These may include customer lists, standard operating procedures, a new logo that you have designed or an invention. If these forms of intellectual property meet certain requirements, they will be eligible for protection.
copyright	The rights of an author to stop the unauthorised reproduction of a substantial part of his or her artistic, literary, dramatic or musical works. Computer software is also protected in terms of the Copyright Act.
trademark or “mark”	Any word, phrase, symbol, design, sound, smell, colour, product configuration, group of letters or numbers, or combination of these, adopted and used by a company to identify its products or services and distinguish them from products and services made, sold or provided by others. The primary purpose of marks is to prevent consumers from becoming confused about the source or origin of a product or service.
trade names	These are not marks. A trade name is a word, name, term, symbol or combination of these, used to identify a business and its goodwill. Whereas a mark identifies the goods or services of a company, a trade name identifies the company itself.

patents	These may be used to protect inventions which are new, involve an inventive step and have a use in trade, agriculture or industry.
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- Defamation (false statements to third parties about you that harm your reputation) or injuria, for example, an insult;
- Costs arising from legal actions, arbitration, inquests and statutory enquiries:
 - Between people insured under this section;
 - Brought outside South Africa;
 - Between the insured and the insurer.

12.5 Compensation

The insured will be compensated for legal costs that the policyholder would be liable for under 'What we insure'.

Limit of compensation

The insurer will compensate the insured up to the limit shown in the schedule.

Excess

There is an excess applicable in the schedule for legal costs.

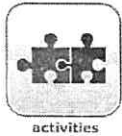
Underwriting Rules and Considerations

A Household Goods or Motor section must support this. Two questions need to be asked which will confirm whether the client has:

1. been involved in any civil/criminal litigation in the last 3 years and;
2. whether the client is aware of any circumstances that may give rise to legal costs.



If "yes" is answered to either of these questions, such risk will be referred for acceptance.



ACTIVITIES

Activity 1

The insured's mother is currently living with the insured and his wife. His wife borrowed money from her mother-in-law and failed to pay back the loan. The mother-in-law then instituted a civil claim against her daughter-in-law.

Would the insured be able to claim the legal costs incurred under the Legal Costs section of the policy, and why or why not?

Activity 2

The insured's son, Joel, went to the local mall with a group of friends. He was asked by one of his friends to carry his backpack for him. On leaving one of the shops in the mall, the alarm sounded just as Joel was exiting the shop. He was detained by the shop security and the South African police were called. The shop security was not interested in the fact that the bag did not belong to Joel and he was unaware of the contents. Joel was charged with shoplifting. His parents made the necessary arrangements for Joel to have legal representation when he appeared in court.

Would the costs that were incurred for the legal representation be covered in terms of the policy wording?

Activity 3

The policyholder insured his building with ABC Bank and holds an Allsure policy for the rest of his portfolio. The building policy with ABC Bank specifically excludes subsidence cover. The insured noticed cracks appearing and he institutes a claim against the building policy.

ABC Bank rejected the claim on the basis that the loss occurred as a result of subsidence and there is no cover in terms of the policy wording. The insured was adamant that the damage did not occur as a result of subsidence and decided to institute a civil claim against ABC Bank. The attorney appointed by the insured would have to obtain geological surveys and reports to substantiate the insured's claim that the damage was not caused as a result of subsidence.

Would the costs associated with the investigation and legal fees be covered in terms of the policy wording, and why or why not?

Activity 4

The insured has a fast food outlet known as Burger Den. One of the items on their menu is "Chilli Beef Balls". The insured had trade mark rights to "Chilli Beef Balls", having used the terms for many years and registered it as a trade mark. The insured finds out that fast food chain, Beef Delight is using the term "Chilli Beef Balls" for one of their menu items. As a result, the insured obtained an interim interdict in the High Court against Beef Delight, which required them to stop using the term "Chilli Beef Balls" on their menu. In the court papers, the insured claimed that the use of the term "Chilli Beef Balls" gave Beef Delight a great advantage in the market place. Beef Delight tried to avoid legal proceedings by offering to change the name of its menu item from "Chilli Beef Balls" to "Shisa Beef Balls". However, Burger Den turned this offer down because "shisa" is the Zulu word for "hot".

Would the legal costs be covered in terms of the policy wording? Why or why not?

Activity 5

The insured lodged a claim with his insurers and the claim was rejected. The insured decided he had a strong enough case and decided to institute legal action against his insurers.

Would the insured be able to claim the legal costs incurred under the Legal Costs section of the policy and why or why not?



Summary

Individuals often face litigation and other legal costs which may result in exorbitant amounts. The intention of the Legal Costs policy is to cover legal costs obtained in a personal capacity and not to cover business-related legal costs.

In this learning unit the important aspects that were covered include what the exclusions are, the difference between civil and criminal cases, as well as who might be covered by this section of the policy.

In order to clarify matters further, several definitions and explanations of legal terminology have been given to assist you when dealing with the client.

Learning Unit 13: Extended Personal Liability



learning outcomes

Learning Outcomes

Upon completion of this learning unit, it is expected that you will be able to:

- Understand and provide definitions for terminology.
- List who we insure for extended personal liability.
- Describe what we insure under extended personal liability.
- Identify what we do not insure (exclusions) under extended personal liability.
- Identify the underwriting rules relevant to the insurance of extended personal liability.

