

Conflict between the Marine Insurance Act 1906 (UK) and South African insurance legislation

In *Lloyd's v Classic Sailing Adventures (Pty) Ltd* 2010 ZASCA 89 (31 May 2010) (available from www.justice.gov.za/sca) the South African Supreme Court of Appeal held that sections 53 and 54 of the South African Short-Term Insurance Act 53 of 1998 are rules of immediate application that cannot be excluded by a choice of law. English law was chosen as the proper law of the insurance contract. The court held that, in as far as the Marine Insurance Act 1906 (UK) was in conflict with the South African provisions, it would not be applied. Section 53 deals with the effect of non-disclosure and misrepresentations and "is designed to protect insured parties who are ignorant, careless or uneducated from unscrupulous insurers who attempt to escape liability" (par 24). Section 54 deals with the effect of a contravention of a law on a policy and "ensures that a policy is not avoided only because the insured has contravened a law" (par 24). In an important obiter dictum, the court indicates that constitutional norms are invariably of direct application (par 25). A similar view was recently adopted in *Burchell v Anglin* 2010 3 SA 48 (ECG), in the context of cross-border defamation.