

# Restraints of trade in a time of Covid

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Gabriel Marquez' book, "Love in a Time of Cholera" tells the tale of two lovers caught in the midst of calamity – both a plague which ravages the Country, and the effects of a Civil War.

The High Court in Gauteng has recently, handed down a judgement which sets the law relating to Restraints of Trade on its head! In coming to its conclusion, the Court applies the Appellate Division test which holds that restraints of trade are valid in law and are unenforceable if they are against public policy. A Restraint is unreasonable if it restricts the party's freedom to trade or work. Reasonableness will depend on the facts of each case and are not limited to those circumstances which existed at the time the Restraint was agreed.

In the Oomph case (see PDF for details) a Director and employee of the company left and immediately started working for a competitor – this despite signing a Restraint agreement and agreeing to a Restraint in the Shareholder's Agreement.

The Judge took into account the effects of Covid on the economy on a macro and micro level, during a time when many businesses are closing down, retrenchments and lay-offs being common place and individuals doing everything possible to survive and cope with the health and economic devastating effect of the Covid-19 pandemic, that it is unreasonable and therefore against public policy to enforce a restraint under these circumstances.



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