

SA Law Reform Commission

Presentation

Revised Discussion Paper on Prescription Periods

Overview

The essence of prescription is succinctly captured in the following remark made by the great Dutch jurist, Johannes Voet:

**Why should controversies
not be fixed in time
lest they become immortal
whilst men remain mortal**

Prescription is primarily concerned with elevating the **public interest** (and by association, those of the **debtor**), for it is in the public interest that rights should be enforced expeditiously & diligently to prevent disturbance of the peace

Whilst this may entail subordinating the interests of the creditor, it proceeds on the basis that it is in the hands of the creditor, and the creditor alone, to take active steps to enforce his rights

The rules of prescription, however, being neither ruthless nor inflexible; do give recognition to the interests of the **creditor** in appropriate circumstances

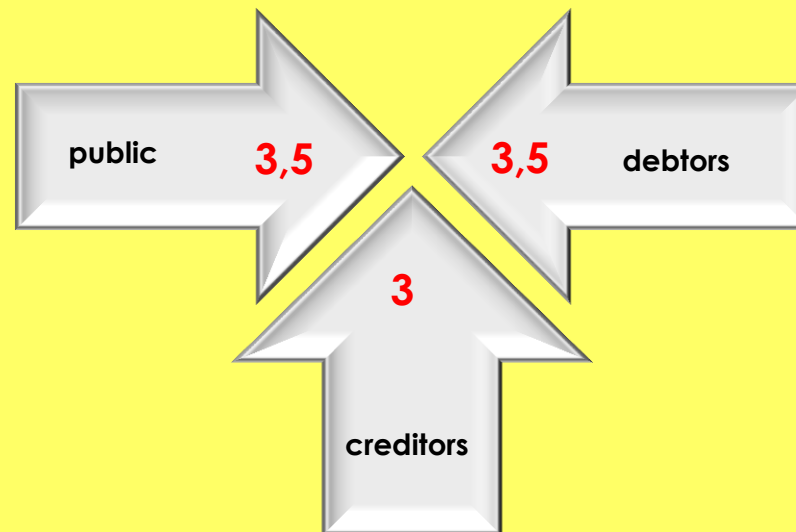
PRIMARY OBJECTIVES

- The achievement of **legal certainty & finality**
- The **expeditious & diligent** enforcement of rights

SECONDARY OBJECTIVE

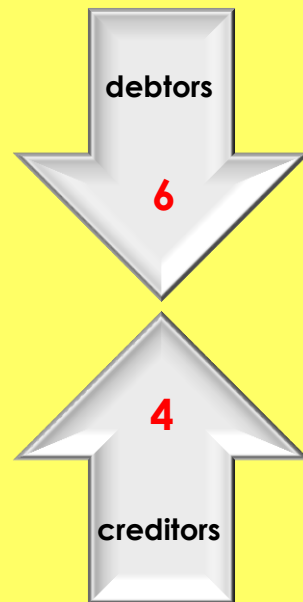
- The protection of interests of the **creditor** in instances where **unable to timeously assert a right**

The tension created by this **weighing of interests** between the **public**, the rights of **debtors** and the rights of **creditors**, so that both **justice and equity** are **substantially equally** served may be expressed by way of the following ratio:



“The Prescription Balance”

Going forward, because focus is usually placed on the debtor/creditor relationship, the Prescription Balance may be expressed as follows:



The Prescription Balance

AIM OF INVESTIGATION

- To complete the earlier work of the Commission into harmonising the existing laws providing for different **“*limitation provisions*”** (in relation to enactments that had not been dealt when ILPACOS was passed in 2002); and
 - Special time limits**
(Notice/Limitation/Special prescription)
 - To review certain aspects of the laws of extinctive prescription in instances where its rules-
 - prejudice the interests of society by failing to operate in accordance with well-established legal principles; and
 - fail to operate in line with constitutional values, including the right of access to courts
- Prescription of debts**

EXTINCTIVE PRESCRIPTION

Prescription of debts

Special time limits

(notice /limitation/**special prescription**)



BIRD'S EYE VIEW OF TOPICS DEALT WITH

