The Prescription Act an explanatory memorandum for paralegals

The aim of this memorandum is to provide paralegal with a desk guide on the Prescription Act 68 of 1969. It seeks to provide the basic tenants of the Prescription Act, who it applies to and when prescription can be interrupted. This is an explanatory memorandum which accompanies the power point presentation on the Prescription Act an explanatory memorandum for paralegals. The main reason for introducing the Prescription Act is to bring legal fatality and certainty to litigation matters.

What is prescription?

Possession is but 9/10th of the law. Prescription is a period which is governed by legislation to institute and finalise a legal matter. It is governed by the Prescription Act 68 of 1969 and provisions of several other pieces of legislation. It is when a person becomes the owner of a thing after he or she has held it openly to 30 years. It is thus when someone holds a possession of another for a period of 30 years or more and such person has not made an attempt to collect the thing.

Prescription against specific categories of persons

Prescription can be interrupted, suspended or postpone for a period in certain circumstances. Section 3 of the Prescription Act makes special provision for when prescription can be postponed.

1. The minor, which is a person under the age of 18 years, as soon as the person turns 18 years prescription commences to run against the individual.
2. A person with mental disability when the person moves out of the lucid interval, the action must be taken against the curator;
3. Where the debtor and creditor are married to each other;
4. Where the object of the debt is disputed in arbitration;

What debts are covered by the prescriptions act?

Section 11 of the Prescription Act provides that prescription shall run for an uninterrupted period of 30 years for:

1. Judgment sound in debt;
2. A debt incurred by way of mortgage bond;
3. A debt incurred by way of taxation or levies imposed by law;
4. A debt incurred by the state in the form of profits of shares, royalties or mining minerals;
5. In the instance on interest on debt, it should be calculated for a period of 3 years.

Section 11(b) provides that prescription runs for a period of 15 years when the debt is for a long lease against the state.

Section 11(c) provides that prescription runs for a period of 6 years against a bill of exchange or negotiable instrument.

Section 11(d) provides that unless the law provides otherwise, prescription against incurred in a manner other then in section 11(a) shall be three years.

When is prescription due?

Prescription commences the moment when the debt is due. Where a debtor prevents a creditor to ascertain information which determines when prescription is due, prescription commences the moment when the creditor receives the information. Where the creditor should have had reasonable knowledge of when prescription commences, then prescription commences the moment when the debt is due. A debt shall not be due when the creditor does not have knowledge of how the debt was incurred or the identity of the creditor.

When is prescription interrupted?

Prescription is interrupted when the debtor expressly or tacitly acknowledges the debt. The prescription runs afresh or on a date determined by the debtor and creditor.

Section 15 provides that prescription shall be interrupted by judicial proceedings. This means that the moment when a letter of demand or notice of motion is served, the prescription will be interrupted.

Application of the Prescription Act

The Prescription Act shall only apply in the absence of another act of parliament which makes special provision for prescription.

- The Institution of legal proceedings against certain organs of the State
- Magistrates Court Act Section 77-the date when the debtor lodges its papers with the court administrator;
- The Pension Fund Act makes reference to the Prescription Act but does not expressly provide for a period when prescription should commence;
- The Apportionment of Damages Act provides that prescription shall run 12 months after judgment is handed down where the wrongdoer are jointly and severally liable;
- Compensation for Occupational Injuries Act provides that
prescription commences 12 months after the accident occurred

- The Road Accident Act provides that prescription ends 3 years after the accident has happened but shall not run against a minor, person under curatorship and person with mental disability;

Exercises:

Divide the class in groups of 3 and provide for self learning and group study. Each group must take one exercise, discuss it in the group and then present their findings to the rest of the group.

Guiding questions when dealing with prescription

Who are the parties to the matter?

When was the contract into?

Does any other legislation apply to the facts of the matter?

Is there a special reason for prescription not to apply?

What are the relevant timeframes?

Example one:

Anna is 22 years old. She bought a book from Thandi who is 24 years old. Thandi moves away and does not collect the monies from Anna. The sale took place in 2006, does Thandi have a claim?

Example two:

Max was in a car accident and as a result he is mentally ill. He recovers from his mental condition and wants to institute a legal claim. He receives a letter which informs him that his claim expired whilst he was in a coma. What is your advice to Max.

Example three:

Maggie and Bongani are married to each other. Bongani bought a house from Apple Bank make you broke. Maggie borrowed him the deposit for the purchase of the house. He admits that he owes her the money. When is prescription due for all parties concerned?