



YOUR DEBTS HAVE AN EXPIRY DATE

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It's that time of year again. Businesses close, everyone goes off on holiday, and cheer abounds. While you're relaxing for the holidays, however, your debtors book keeps ticking towards its sell-by date.

Debts are subject to something called "prescription". Once a debt prescribes, it is extinguished.

Most debts, absent something more, prescribe three years after they fall due.

What this means, in practice, is that if you do not take steps to interrupt prescription, you have three years from when a debt arises in which to serve summons on your debtor.

If you serve summons after a debt has prescribed, the debtor will be able to raise the defence of prescription. This is an absolute defence if successfully raised, and your action for recovery of your debt will be dismissed. The principle is the same whether your debtor owes you five Rand or five million Rand – your ability to get judgment vanishes in a puff of smoke.

Not only will you be out of pocket; there is no obligation on the debtor to return whatever he bought from you simply because the debt has prescribed. He walks away with his shiny new widget without having had to pay a cent for it.

What's more, by the time you find out your debt has prescribed, it will be too late to do anything about it. Once a debt has prescribed, it cannot be "un-prescribed". While your debtor might still pay you of his own volition (and you would be perfectly entitled to accept that payment), the debt becomes practically unenforceable through the courts, should.

Prescription can be "interrupted" in a number of instances. An interruption of prescription restarts the clock.

The most noteworthy of the interruptions is where the debtor acknowledges that he owes you the debt. It is important that this acknowledgement is unequivocal and given in writing, since it may become a point of dispute in subsequent litigation. It is advisable to have an attorney draw up an acknowledgement of debt for your debtor to sign, if you are going to rely on an interruption of prescription.

It is also important that you hand your debtors over to attorneys timeously. Unless the running of prescription has been interrupted or otherwise extended in terms of the Prescription Act, you will need to have summons drawn up, issued and served before the prescription period expires.

The longer the delay in recovery, the greater the risk of no recovery at all.

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