

CHAPTER 13:01
PRESCRIPTIONS
ARRANGEMENT OF SECTIONS

SECTION

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Proc. 76, 1959,
Law 30, 1962,
L.N. 84, 1966,
S.I. 96, 2006.

An Act to amend the law relating to prescriptions.

[Date of Commencement: 4th December, 1959]

1. Short title

This Act may be cited as the Prescriptions Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**action**" means any legal proceedings of a civil nature brought in a competent court in Botswana for the enforcement of a right but does not include any legal proceedings founded on customary law;

"**creditor**" means a person by whom a right is enforceable by action;

"**debtor**" means a person against whom a right is enforceable by action;

"**oral contract**" means any contract other than a written contract;

"**person under disability**" means-

- (a) a minor;
- (b) any person under curatorship;
- (c) in the case of an action between spouses both the husband and the wife, unless they are living apart; and
- (d) in the case of an action between partners in respect of rights arising out of the partnership, each partner for so long as he remains a member of such partnership;

"**prescription**" includes acquisitive and extinctive prescription;

"**written contract**" includes a contract of which the terms to be proved in order to establish the claim in issue are in writing if such writing is admissible in evidence.

3. Acquisitive prescription

(1) Acquisitive prescription is the acquisition of ownership by the possession of another

person's movable or immovable property or the use of a servitude in respect of immovable property continuously for 30 years *nec vi, nec clam, nec precario*.

(2) As soon as the aforesaid period of 30 years had elapsed such possessor or user shall *ipso jure* become the owner of the property or the servitude, as the case may be.

4. Extinctive prescription

(1) Extinctive prescription is the rendering unenforceable of a right by the lapse of time.

(2) The periods of extinctive prescription shall, subject to the provisions of section 14(2), be the following-

- (a) one year in respect of-
 - (i) an action for defamation;
 - (ii) the *actio redhibitoria*;
 - (iii) the *actio quanti minoris*;
- (b) three years in respect of-
 - (i) any oral contract;
 - (ii) any remuneration whatever or disbursement due to any person for or in connection with services rendered or work done by him;
 - (iii) the price of movables sold and delivered, materials provided or board or lodging supplied;
 - (iv) rent due upon any contract;
 - (v) interest due upon any contract including a mortgage bond;
 - (vi) actions for damages other than those for which another period is laid down in this Act;
 - (vii) the *actio doli*;
 - (viii) subject to the provisions of paragraph (a) *condictiones indebiti, condictiones sine causa*, and proceedings at common law for *restitutio in integrum*;
- (c) six years in respect of written contracts including bills of exchange and other liquid documents but excluding mortgage bonds unless a shorter period is applicable under any provision of paragraph (b);
- (d) 30 years in respect of-
 - (i) mortgage bonds;
 - (ii) judgments of a court of law for payment of money or for specific performance or other such judgments which require further action by the person in whose favour they have been given in order to secure compliance therewith;
 - (iii) any other action for which a period has not been provided in this Act.

(3) No defence to a claim shall become prescribed before the said claim is itself prescribed.

(4) A judgment of a court of law other than one referred to in subsection (2)(d)(ii) shall never be prescribed.

(5) A debt prescribed by extinctive prescription-

- (a) may be set off against a debt which came into existence after the expiration of the period of prescription; and
- (b) is sufficient to support a contract of suretyship; but
- (c) may not be ceded or in any other way transferred:

Provided that after the lapse of 30 years from the date on which the right of action in respect thereof first came into existence a debt so prescribed shall cease to be capable of being set off or of supporting such contract of suretyship.

5. Application of two or more periods

If two or more periods of prescription may be applied to one cause of action the longest period shall be the period of prescription.

6. Beginning of prescription

(1) Extinctive prescription shall begin to run-

- (a) in respect of any action for damages-
 - (i) where the debtor is known to the creditor, from the date when the wrong upon which the claim for damages is based was first brought to the knowledge of the creditor, or from the date when the creditor might reasonably have been expected to have knowledge of such wrong, whichever is the earlier date;
 - (ii) where the debtor is not known to the creditor, from the date when the creditor ascertained or might reasonably have been expected to ascertain the name of the debtor;
- (b) in respect of an action, other than an action for damages, from the date when the right of action first accrued against the debtor;
- (c) in respect of an action on a promissory note which requires presentment for payment in order to render the maker liable thereon, from the date of presentment.

(2) For the purposes of this Act a right of action in respect of a claim referred to in section 4(2)(b)(ii) shall be deemed first to have accrued when the work or services in question have been completed or when the relationship of employer and employed has ceased in regard to the particular matter, whichever is the earlier date.

7. Interruption of prescription

(1) Extinctive prescription shall be interrupted by-

- (a) acknowledgement by the debtor by-
 - (i) part payment;
 - (ii) payment of interest;
 - (iii) the giving of security; or
 - (iv) admitting liability in any other manner, whether express or implied, and whether verbal or in writing;
- (b) service on the debtor of any process whereby action is instituted;
- (c) submission to arbitration;
- (d) the filing of a claim against-
 - (i) an insolvent estate;
 - (ii) a company in liquidation; or
 - (iii) the estate of a deceased person,

and shall begin to run *de novo* from the date when the interruption occurred:

Provided that no period of prescription so beginning to run as a result of an admission of liability, other than an acknowledgement in writing, shall extend beyond three years after the date upon which the period of prescription which has been interrupted would have expired.

(2) Interruption as against the principal debtor shall be deemed to be an interruption as against the surety.

8. Suspension of prescription

(1) Extinctive prescription shall be suspended-

- (a) so long as performance of an obligation is delayed by *vis major* or the debtor is lawfully entitled to delay performance on any other ground;
- (b) during the period of disability of the creditor;
- (c) during the absence of the debtor from Botswana for a period exceeding six months;
- (d) until the date when the creditor might reasonably have been expected to discover the true facts in respect of his right of action if, by the fraud of the debtor, the creditor has been prevented from discovering such facts;
- (e) in an action founded upon the fraud of a debtor, until the date when the creditor might reasonably have been expected to discover the said fraud.

(2) The period of suspension of prescription shall not be deemed to form part of the period of prescription and prescription shall resume its running from the date on which the suspension ceases and shall be completed on the expiration of a period which at the date of commencement of suspension is equal to the unexpired portion of the full period required by

this Act.

9. Co-debtors

Prescription shall not be affected in respect of one joint debtor by any fact which would affect prescription in respect of any other joint debtor except in the case of debtors liable *in solidum*.

10. Disability of creditor

Where the creditor is a person under disability, extinctive prescription shall not begin to run until the date when disability ceased.

11. Absence of debtor

Where the debtor is absent from Botswana, extinctive prescription shall not begin to run until the date of his return.

12. Application of Act

(1) A prescription which has been completed on or after the commencement of this Act shall be deemed to have been completed under this Act.

(2) A prescription which has begun to run prior to the commencement of this Act shall be deemed to have begun to run under this Act but the period thereof shall be the period which was applicable prior to such commencement:

Provided that-

- (i) in no case shall the period exceed 30 years;
- (ii) in no case mentioned in section 4(2)(a), (b) and (c) to which the provisions of section 14(2) do not apply, shall the period exceed eight years;
- (iii) in the case of a claim referred to in section 14(2), the period shall be 15 years.

(3) Except where otherwise expressly provided, nothing contained in this Act shall affect any provision with regard to prescription which is in force in any other law.

(4) This Act shall not apply to any action between persons subject to any customary law in so far as under the Customary Courts Act such action is governed by customary law.

13. Action on an account

If action is instituted for the amount of balance of an account, no right of action in respect of a prescribed claim shall be maintainable by reason only of the inclusion in the same account of some other claim in respect of which the right of action first arose within the period of prescription.

14. Application to State

(1) Subject to the provisions of subsections (2) and (3), this Act shall bind the State.

(2) Notwithstanding the provisions of section 4(2)(b) or (c), the period of prescription in respect of any claim by the Government which would, but for the provisions of this subsection, become prescribed in terms of the said paragraphs in three years or six years, shall be 15 years if the claim in question arises out of or is founded on-

- (a) an advance or loan of money made by the State to the debtor, whether in terms of an oral or a written contract; or
- (b) any deed or instrument executed or passed by the debtor in favour of the State in respect of or to secure such advance or loan.

(3) Acquisitive prescription shall not run against the State except in the case of movable property capable of being alienated by the State and of being owned by a private person.

15. Saving for immovable property of tribes

(1) Acquisitive prescription shall not run against any tribe except in the case of movable property capable of being alienated by the tribe and of being owned by a private person.

(2) This section shall be deemed to have come into operation on 10th June, 1891.

16. Prescription to be raised in pleadings

A party to a suit who raises prescription shall do so in the pleadings:

Provided that the court may allow prescription to be raised at any stage in the proceedings.

17. Enactments ceasing to apply in Botswana

The following enactments shall cease to apply in Botswana-

- (a) the Prescription Amendment Act, 1861, of the Colony of the Cape of Good Hope;
- (b) section 106 of the Land Beacons Consolidation Act, 1865, of the Colony of the Cape of Good Hope.