UNIT 7:
PRESCRIPTION
Learning outcomes

After reading Unit 7, you should be able to do the following:

- Know when prescription is suspended.
- Understand when prescription commences in the case of identified claims as well as hit-and-run claims.
- Know what the prescription periods of the different third party claims are.
- Understand when interruption of prescription takes place.
- Explain the following concepts:
  - Condonation
  - Extension agreements
  - Waiver
  - Estoppel
  - Acceptance and costs

Readings

Klopper (2008) Chapter 7
Introduction

Read this paragraph on p. 271.

1. Claims against Road Accident Fund

1.1 Introduction

Read this paragraph on p. 271.

1.2 Suspension of prescription

Study pp. 271-274 and section 23(2) of the RAF Act.

In terms of the RAF Act, the running of prescription against the following persons is suspended with regard to their third party claims:

- Minors;
- Persons detained as patients in terms of mental health legislation; and
- Persons under curatorship.

It is important to remember that in the case of hit-and-run claims, prescription runs against persons with legal disabilities regardless of their disabilities. This is in accordance with regulation 2(3) of the RAF regulations. However, take note of the contrasting points of view taken by the Supreme Court of Appeal regarding the validity of this regulation in Moloi and Others v RAF 2001(3) SA 546 (SCA) and Geldenhuys and Joubert v Van Wyk and Another 2005(2) SA 512 (SCA) respectively. (See Klopper: p. 274).

Prescription against minors will only commence once they have reached the age of 18 years and will be completed three years after majority has been achieved. Take note that the Recognition of Customary Marriages Act 120 of 1998 (referred to in footnote 5 of p. 278 of your prescribed textbook) came into operation on the 15th of November 2000. In terms of this Act full status is accorded to a woman married according to customary law and they are therefore no longer deemed to be minors.

Klopper (p. 273) submits that prescription is not suspended in the case of persons in a coma or persons who are non compos mentis, but who cannot be detained in terms of mental health legislation. Suspension will, however, take place if and when a curator is appointed for such persons.

Prescription of the third party claims of persons who are under curatorship are suspended for the duration of the curatorship.
1.3 Commencement of prescription

Study p. 274 and section 23(1) of the RAF Act.

In the case of identified claims, prescription starts running on the date on which the cause of action arose. In terms of regulation 2(3) of the Regulations to the RAF Act, prescription in the case of hit-and-run claims commences on the date on which the claim arose.

Where the claimant was injured, the cause of action will arise on the date of the collision. Take note that if a breadwinner is not killed on impact, but dies of his/her injuries at a later date, the cause of action or claim for loss of maintenance arises on the date of death of the breadwinner and not on the date of the accident as in the case with injury.

1.4 Period

Study pp. 275-276.

In the case of identified claims, the claim of a third party prescribes after three years, whereas a so-called hit-and-run claim prescribes after two years. (With regards to hit-and-run claims it was decided in RAF v Ngubane [2007] SCA 114 (RSA) that the RAF may waive this requirement or enter into a compromise with the claimant with regards thereto.)

Once an identified claim has been lodged with the Fund, the prescription period is extended by a further two years. The effect of this is that the claim will only prescribe five years after the date on which the cause of action arose. The claimant, in other words, has five years in total from the date on which the cause of action arose within which he/she is entitled to enforce his/her claim against the Fund by serving summons on them, provided, of course, that such claim was timeously lodged with the Fund within the prescribed period of three years.

The prescription period in the case of hit-and-run claims is extended by three years if such a claim was timeously submitted with the Fund. This would mean that, as in the case of identified claims, a claimant has a total of five years from the date on which the claim arose within which to enforce such a claim against the Fund by serving summons on them.

The civil method of calculation (computatio civiles) is used to calculate the prescription period. In terms of this method, the first day is included, and the last day is excluded. In the calculation, no allowance is made for Sundays and public holidays. Example: if an accident took place on 15 June 2000, the claimant is a major, and the negligent driver or owner of the concerned vehicle was identified, the claim must be lodged with the RAF on a date not later than 14 June 2003. (For a further example see footnote 42 on p. 276 of your prescribed textbook).
1.5 **Interruption of prescription**

Study pp. 276-277.

The prescription of a third-party claim is interrupted by the issue and timeous service of a summons on the RAF. Such a summons can only be served once a period of 120 days has elapsed from the date of submission of the concerned claim with the RAF. If the claim is, however, repudiated in writing by the RAF within the above-mentioned 120 days, issue and service of the summons may be validly done at any time (in other words, even before the 120 days have expired).

1.6 **Prescription Act 68 of 1969, condonation, extension, agreements, waiver, estoppel, acceptance, and costs**

Carefully read par. 2.6.1 and study par. 2.6.2 to par. 2.6.6 on pp. 278-279.

Take note that no condonation of prescription in terms of the RAF Act 56 of 1996 is possible.

Despite the wording of section 24(5) of the Act, failure by the RAF to object to a claim on the basis that a claim has prescribed does not negate prescription. The reason for this is that this particular section solely applies to procedural compliance with the requirements of section 24 and not to substantive law.

1.7 **Prescription of supplier’s claims**

Study p. 279.

A supplier’s claim will only prescribe once the third party’s claim becomes prescribed irrespective of the date on which the supplier rendered service or supplied goods or accommodation to the third party.

2. **Claims against wrongdoers**

Study pp. 279-283.

From 28 November 2002 the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002 (ILPCOSA) applies to all claims against an organ of the state arising from an act performed or omission of any duty in terms of any law. This Act repeals virtually all prior provisions governing periods of limitation and procedures of enforcement of actions against the state and its organs.
The applicable prescription periods in relation to existing due debts against state organs are governed by the Prescription Act 68 of 1969.

A written notice stating the facts which gave rise to the debt and particulars of the debt must be served in the prescribed manner on the particular organ of the state within six months from the date that the debt became due before such a due debt payable by a state organ may be enforced. No legal proceedings may be instituted without such notice unless the authority concerned agreed thereto in writing or a court condoned the failure to give notice.

In terms of ILPCOSA of 2002 as well as section 15(2) of the Prescription Act of 1969 judicial interruption of prescription will only take place once issue and service of a legal process in which the due debt is claimed, have been effected.

Take note that the legislative limitations which governed claims against the SAPS, the SANDF, Provincial governments and local authorities have been repealed. You can therefore ignore paragraph 3.3 in your prescribed textbook.

3. Other related claims

Study pp. 283-284.

4. Consequences

Study p. 284.

Activity 1

1. Name the persons against whom prescription does not run in terms of the RAF Act 56 of 1996.
2. Which method of calculation is used to calculate the running of prescription?
3. Where a third-party claim has been lodged timeously with the Fund, is it possible to enforce it the very next day by issuing summons against the Fund?