Characterisation and liberative prescription/limitation in South Africa


The case dealt with the scenario that the limitation rules of the lex causae (English law) were of a procedural nature according to both the lex causae and the lex fori, the prescription rules of the lex fori being of a substantive nature (according to the lex fori). The court applied the rules of the lex causae. The court a quo, the Transvaal High Court, applied the rules of the lex fori: see Society of Lloyd’s v Price; Society of Lloyd’s v Lee 2005 3 SA 549 (T). In a similar case, the Cape High Court applied the lex causae: Society of Lloyd’s v Romahn 2006 4 SA 23 (C).

Forsyth welcomes the court’s adoption of Falconbridge’s via media characterisation technique but Neels is in favour of a simple rule that liberative prescription is a substantive issue governed by the lex causae, irrespective of how the lex causae classifies its own liberative prescription or limitation rules (including such characterisation in terms of the domestic lex causae and such classification in terms of
the private international law of the lex causae).