

Characterisation and liberative prescription/limitation in South Africa

South African academics welcome the outcome of the decision of the Supreme Court of Appeal in *Society of Lloyd's v Price; Society of Lloyd's v Lee* 2006 5 SA 393 (SCA) (which may be downloaded from www.supremecourtofappeal.gov.za). See Forsyth "Mind the gap' part 2: The South African Supreme Court of Appeal and characterisation" 2006 *Journal of Private International Law* 425-431 and Neels "Tweevoudige leemte: Bevrydende verjaring en die internasionale privaatreë" 2007 *Tydskrif vir die Suid-Afrikaanse Reg [TSAR] / Journal of South African Law* 178-188.

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*).