

The In Duplum Rule - How much interest can I recover from a debtor?

In terms of this rule a creditor can only recover maximum interest up to the amount of the capital debt. Over the last decade or two our Courts have had a few opportunities to develop this common law rule.

1. Any doubt that this rule is still part of our law has been removed by the Appeal Court in 1992 when the Court confirmed that this rule is still very much part of our modern legal system. The purpose of this rule is to protect debtors and in this particular case (LTA Construction Beperk v Administrateur, Transvaal) the Court ruled that this rule applies to all contracts under which a debt is subject to interest at a fixed rate. It does therefore not only apply to ordinary money-lending transactions.
2. In Standard Bank of South Africa Limited v Oneanate Investments (Pty) Ltd (In Liquidation) in 1998 the Court furthermore ruled that the in duplum rule cannot be waived by a debtor.
3. In a 2002 case in the Appeal Court (Commissioner, SARS v Wouldge) the Court emphasized that the real purpose of this rule is the protection of borrowers against exploitation by lenders and the rule can only be applied where this consideration is present.
4. Recently in 2005 in the Durban High Court (Verulam Medicentre (Pty) Ltd v Ethekeweni Municipality) the Judge concluded that it is important that the rule will only be applicable if the interest claimed does not serve a purpose other than the ordinary function that interest fulfils. More important however is that the Court also held that a borrower like the Ethekeweni Municipality is not the sort of party that required protection.

In conclusion it is clear that in the majority of cases a creditor will not be able to recover interest exceeding the capital amount of the original claim. It is therefore of the utmost importance that long outstanding debts should be recovered before the in duplum rule becomes a possibility or a probability in an endeavour to prevent a situation where a creditor can no longer recover any further interest.