Short notes on:  

**IN DUPLUM RULE – STATUTORY VS COMMON LAW INTERPRETATION**

The *in duplum* rule originated in Roman law and has been implemented in South African law since 1830. *In duplum* means “double the amount”. In terms of the common law the *in duplum* rule is as follows: where the total amount of arrear and unpaid interest has accrued to an amount equal to the outstanding capital sum, interest ceases to run, but any payment made by the debtor thereafter will lead to the amount of interest decreasing after which interest again starts to accrue to an amount equal to the outstanding capital amount.

In terms of Section 103(5) of the National Credit Act, Act 34 of 2005 (“NCA”): “Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 101(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs.”

Nedbank v National Credit Regulator (2011) ZASCA 35 the Supreme Court of Appeal confirmed that the *in duplum* rule as set out in the NCA is not a codification of the common law rule. The rule as embodied in the NCA is applicable only to agreements which fall within the ambit of the NCA. All other agreements not regulated under the NCA will adhere to the common law rule.

**Differences between the common law *in duplum* and *in duplum* as contained in the NCA Section 103(5).**

The common law rule only applies to unpaid interest, whereas the statutory rule includes a number of costs in addition to interest, which may in aggregate not exceed the unpaid principle debt at any point while the consumer is in default under a credit agreement. These other costs as set out in the NCA include: initiation fees, service fees, interest, cost of any credit insurance, administration charges and collection costs.
The most important difference is that the common law rule does not bar interest from accruing again once the outstanding interest has been reduced below the *in duplum* threshold. Thus, once a debtor makes a payment towards the outstanding amount which has the effect that the outstanding amount is reduced below the principle outstanding debt, then the rule will not apply and interest can start running until the threshold is reached again. In terms of the statutory rule the rule will apply the entire time of the default, thus as long as the debtor (consumer) remains in default the credit provider is not allowed to charge further charges or interest, even though the debtor reduce the charges by repayments. The application of both can be illustrated by the following graphs:
Conclusion

The statutory *in duplum* rule is more burdensome on the credit provider as the *in duplum* limit will be reached much sooner than the common law limit. The statutory *in duplum* offers greater protection for consumer, but the credit provider is not in a beneficial position.

An attorney at Schoeman Tshaka Attorneys can offer you guidance and assistance with the application of the *in duplum* rule whether you are a consumer or a credit provider. Contact us if you are uncertain whether your credit agreement falls within the ambit of the statutory or common law *in duplum* and whether it is being applied correctly.