In duplum rule and reckless lending under national credit act, its impact on credit agreement.

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ABSTRACT

This research deals with the common-law principle namely in duplum rule, maximum limit of interest that is charged for credit transactions. Customer's protection has been a relatively recent development in the law sphere; the charging of the interest, however, has not. From compound interest, to simple interest, to no interest, the history of usury is lengthy. It is important, and more significantly, the dialog over how it should most effectively be regulated is equal in length and still a most contemporary topic discussion. Credit customer's protection, being an obvious hybrid of this development, also had a fair share of academic literature devoted to it. Generally translated, in duplum means double the amount. It has been part of the South African legal system since the 1800s. It is a common law principle stating that interest on a debt will stop to run when the total amount of the arrear interest has increased to an amount equal to the outstanding principal debt. In a community where credit has become so easily accessible, the courts and legislature became obliged to develop the common law to afford more protection to the customers. For this very mission, the legislature promulgated the National Credit Act No 34 of 2005. The research also highlights reckless lending, which reckless credit lending that is used to be a new term introduced in the credit or lending market to increase customer spending, but it is currently a popular practice in the credit industry. The National Credit Act must protect customers, specifically against ever-present increasing reckless credit practices. Certain sections relating to reckless credit, however, are mostly unclear.

In South Africa, the legislature failed to make the statutory in duplum rule understandable and easy to apply, and instead complicated it by adding the costs of credit to the interest so that a need to calculate and determine which amounts would be considered in the "double" arose. The South African judiciary and legislature are obliged to educate the populace of the existence of the rule, as most transactions will not come to court and this may leave most debtors still over-indebted.

Key Words: in duplum, reckless-lending, common law, creditor, over-indebtedness, debtor, and statutory law.

DEDICATION

This dissertation is dedicated to my family, my children, and Mrs Thembelihle Nxumalo (Ndlovu) for their love, patience, and encouragement throughout the years that have gotten me this far.

LIST OF ABBREVIATIONS

ALR: Albany Law Review

DTI: Department of Trade and Industry (South Africa)

NCA: National Credit Act 34 of 2005

SA Merc LJ: South African Mercantile Law Journal

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CHAPTER 1: INTRODUCTION

1.1 General Introduction

Individual debtors across the globe are often criticised for over-borrowing, a practice which could be avoided if creditors become cautious in providing debt. The attainment of political and economic independence by South Africa in 1994 saw the creation of more financial opportunities for the marginalised citizens. The opportunities includes the provision of loans by financial institutions, buying clothes, groceries, property and vehicles on credit and several other means towards financially empowering the previously disadvantaged individuals. It is this widening of financial opportunities which gave rise to borrowing by individual debtors at the exploitation of the debtors leading to over-borrowing to the extent that most individuals are no longer creditworthy and if an individual is not creditworthy, this could lead to negative social effects such as increased poverty levels across the economy all in the name of creditor exploitation. To deal with this menace, the South African government enacted the National Credit Act (NCA), to deal with matters responsible lending in the context of the in duplum rule and reckless lending.

Therefore the purpose of the study is to explore the in duplum rule and reckless lending under NCA and the impact it has on credit agreement. This chapter documents the motivation for the study, the problem statement, the focus of the study, the objectives, questions and significance of the study. In addition, the chapter presents the brief methodology, the outline of the dissertation before winding of with a summary.

1.2 Motivation for the Study

The National Credit Act 34 of 2005 (NCA) has been a topic of discussion since November 2001 when a draft bill was presented to the credit lending industry, showing how credit given to customers in the past was going to change. The NCA came into operation on 1 June 2007. The NCA is customer credit legislation and concentrates on equalling the playing field between consumer debtors and credit

providers. The purpose of NCA is to protect customers who lease or buy durable consumer goods, enter into money loans, and receive credit services. Using plain language, these protections are imposed by introducing new mechanisms and concepts that prevent reckless credit extensions, mandatory disclosures, and over-indebtedness to consumers.

Protection is aimed at regulating cost and marketing practices, compulsory credit assessment prior to granting credit, improved consumer education, establishment of regulatory bodies, compulsory registration, and regulations of the important role players, and prohibition on the waiver of consumer rights.

It is clear that the legislature intended to leave no stone unturned when the NCA was drafted, the intention of which is admirable. However, several sections in the NCA remain unclear and vague, specifically regarding the provisions of the in duplum rule and reckless credit lending. For example, the NCA does not state that a credit contract giving rise to reckless credit lending is *ab initio* void and null, as it is the case with unlawful credit contracts as per Section 89 of the NCA. Therefore, the NCA is not clear as to how the courts should exercise their discretion in respect of reckless credit agreements (Boraine & Van Heerden 2010a (73) THRHR 651).

In 1972, the in duplum rule was succinctly summarised by the Transvaal Provincial Division (Stroebel v Stroebel 1973 2 SA 137 (T)):

In our law there is considerable authority for the statement that interest may not exceed the amount of the capital itself, as soon as the interest reaches an amount equal to the capital the interest ceases to run, if the accrued interest or a part thereof is paid, it starts to run again, but again only until it is again as high as the capital.

Furthermore, there is much uncertainty regarding the application of the statutory in duplum rule in practice, resulting in long litigation and judicial interpretation. For example there is no clear explanation of all the charges that might fall within the ambit of Section 101(1) (b) to (g). In the real world, it is still unclear what range of costs qualifies as collection costs or service costs, or maybe, collection costs would include the costs of third-party debt collection agents that were appointed. It is critical to understand the ambit of each of the charges listed in Section 101 of the NCA because this will have a real effect on the in duplum calculation for Section 103(5) of the NCA.

The Ombudsman for Banking Services, Clive Pillay, and the Credit Ombud, Nicky Lala-Mohan, have taken on credit providers for *prime facie* reckless lending, and as a result of their interventions, consumers have had their principal debts or interest charges and fees written off. The Credit Ombud's annual report carries five case studies, two of which relate to reckless lending. The Credit Ombud closed 50 cases relating to reckless credit in 2015.The first case study tells of the experience of Ms Z, a single mother one year from retirement from the public sector. Although she earns a reasonable salary, she is the sole breadwinner in her family, which consists of her adult son who suffers from a psychological disorder and her sickly parents.

The reports says that when Ms Z found herself struggling to pay her bills, she started taking out loans. Within seven months, she had acquired five loans amounting to R76 000 from one credit provider. She was an irregular payer and by the time she approached the office of the Credit Ombud for help, her creditor had started legal action against her. "We found Ms Z could not afford to pay the loans. Greater consideration ought to have been given [by the credit provider] to her additional expenses when conducting the affordability assessments. In light of these factors, the credit provider agreed to write off the five loans to the value of R140 554."

The in duplum rule is based on public policy, as its purpose is to protect the debtor from exploitation by the creditor. (See Standard Bank v Oneanate Investments supra at 828D for a discussion of the role of public policy and consumer protection in the rationalisation of the perpetual application of the rule). It has been held that this rule is part of our daily economic life where it fulfils the useful function of assisting debtors in financial difficulties. (See LTA Construction v Administrator, Transvaal supra at 482E-F)

This study seeks to make contribution in the protection of a debtor who is in financial difficulty and is unable to service his debts from an ever-increasing accumulation of interest.

1.3 Focus of the Study

Due to the continued application of the in duplum rule in many jurisdictions, in a bid to make customer protection concrete, South African lawmakers codified the rule to strengthen the application of the rule in practice. This study will investigate the following questions: Does the statutory rule override the common law rule or could both rules apply simultaneously? Alternatively, is there an election regarding which rule to apply? What range of costs would qualify as service costs or collection costs? How does the rule avoid reckless lending and facilitates the exercise of diligence in lending?

1.4 Research Problem

Many credit providers misinterpret and incorrectly apply the statutory in duplum provisions, placing them at risk of breaching Section 103(5) of the NCA. (Nedbank ltd and others v national credit regulator and another 2011 (3) SA 581 (SCA)).This could be because of the confusion between the application of the statutory in duplum and common law in duplum rule. If a customer remains in default of his/her payment obligations, the credit provider cannot levy any further charges, notwithstanding that a customer could reduce the outstanding charges by repayments this is in direct contrast to the common law rule. As a consequence of its wider ambit, the statutory in duplum rule provides better customer protection, while, on the other hand, credit providers are left considerably worse-off (Vessio 2010).

1.5 Aim of the Study

The research study aims to avoid over-indebtedness, encouraging responsible borrowing, and the fulfilment of financial obligations by customers. It aims to promote equity in the credit market by balancing the respective rights and responsibilities of consumers and credit providers and promotes responsibility in the credit market by providing a consistent system of debt enforcement, restructuring, and judgement, which prioritises the eventual satisfaction of all responsible customers' obligations under a credit contract.

1.6 Objectives of the Study

The objective of this research is to:

- To identify ways of protecting individual debtors from creditor's exploitation.
- To interpret and apply the statutory in duplum and common law in duplum rule
- To help credit providers in identifying and remedying breaches of the statutory in duplum rule or common law in duplum rule.
- To make recommendations to both debtors and creditors on responsible borrowing.

1.6 Research Questions

- What are the ways of protecting individual debtors from creditor exploitation?
- How best can the statutory in duplum and common law in duplum rule be applied?
- How can credit providers be assisted in identifying and remedying breaches of the statutory in duplum rule or common law in duplum rule?
- What recommendations can be made to both debtors and creditors on responsible borrowing?

1.7 Significance of the Study

This study is critical for the credit market, especially to credit consumers. It protects credit consumers against credit providers who are slow in enforcing the recovery of their debt, thereby contriving to charge an unfair amount of interest for an indefinite period. The in duplum rule is thus a consumer protection and debt alleviation mechanism for debtors who can otherwise not defend themselves against the bargaining power of credit providers in debt provision. The in duplum rule is part of the daily economic life and fulfils the significant function of alleviating debtors in financial difficulties.

Furthermore, the in duplum rule is a good mechanism for limiting the cost of credit, thereby limiting the disastrous socio-economic consequences of the elevated costs

of credit. The in duplum rule also encourages credit providers to be more alert of customers who do not service their debts and discourages them from providing reckless credit through the overextension of debt to consumers with limited financial resources. The in duplum rule is a motivational tool to avoid reckless lending and facilitates exercising carefulness in lending. This study also contributes to the existing body of knowledge towards enhancing responsible borrowing and lending on the part of debtors and creditors respectively.

1.8 Brief Research Methodology

The basic nature of the information being collected will be from secondary sources including but not limited to the Internet (financial, SAFLII, LexisNexis website) and South African case law and credit management publications. Relevant legislation regarding credit agreements and laws of contract will be collected from published texts. This will also include (published texts) collected from debt counsellors, professionals in the field of credit agreement, contractual laws, and private sector institutions' annual reports involved in various aspects of the NCA and credit agreements. Secondary data were collected from the following sources Journal articles, cases authorities, international and foreign cases, reports and government gazettes and web sites

1.9 Outline of the Dissertation

This dissertation is organised into six chapters. The following paragraphs provides the context of the study including the background to the study. The information provided in this section is vital because it informs the reader of the background issues, structures, and terms that will be used. The chapter also identifies the setting of the study.

Chapter 1: Introduction and background to the study

Chapter one introduces the study by outlining the motivation of the study as well as developing the problem statement. The chapter then documents the objectives and research questions. In addition the chapter provides the significance of the study, the brief research methodology and organisation of the study.

Chapter 2: Literature Review

The in duplum rule is thus a consumer protection mechanism aimed at alleviating the debtor from being debt-stricken into poverty and encouraging creditors not to issue reckless credit or to delay enforcing debt repayment. The codification of the rule is thus a reform akin to an extension of the rule and attempt to increase debtor awareness of the existence of the rule.

Chapter 3: Research Methodology

This chapter introduces the research strategy and processes adopted for successful completion. The issue of access and ethics were adequately discussed in this chapter, as they form an integral part of this study. It explains why the qualitative research method was adopted ahead of the quantitative one. It, therefore, lays the foundation for the next chapter that will discuss the findings from the study.

Chapter 4: Results

The in duplum rule is a rule of Roman-Dutch origin that has been preserved by the South African common law. As a useful consumer-protection device, it temporarily ceases interest once the arrear interest has reached the unpaid capital. The rule distinguishes between arrear and accrued interest. Arrear interest is interest that has become due but because of non-payment has accumulated. While accrued interest is also accumulated interest, this type of interest has not become due and payable. The in duplum rule prevents arrear interest from accumulating to more than the unpaid capital amount. This preclusion is only temporary, and as soon as the debtor makes a payment towards the debt, the interest, however, begins to run again. The in duplum rule has no effect on the accrued interest. Thus, when parties agree that the capital amount plus the interest component of the debt will be paid at a future date, without instalments by the debtor in the interim, the in duplum rule will have no effect on the total amount owing.

Chapter 5: Discussion of findings

The common law in duplum rule, as it is generally known in South African law, provides that interest stops running when unpaid interest equals the outstanding capital amount. If the total amount of unpaid interest (both contractual and default

interest: the courts apply the limitation to both kinds of interest) has accrued to an amount equal to the outstanding capital sum, the defaulting debtor (i.e., the borrower of the money) must first start making payments on his loan again (and so decrease the interest amount) after which interest might once again accrue to an amount equal to the outstanding capital sum (Stroebel v Stroebel 1973 (2) SA 137 (T); Administrasie van Transvaal v Oosthuizen & ’n Ander 1990 (3) SA 387 (W)). The rule thus effectively prevents unpaid interest from accruing further once it reaches the unpaid capital sum. Even if interest is capitalised and interest is charged on interest, the capitalised interest does not lose its character as interest and becomes part of the capital amount for purposes of applying the in duplum rule (Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd 1995 (4) SA 510 (C).

Chapter 6: Conclusions and Recommendations

Despite deserving applause for enacting the statutory in duplum rule, the legislature in South Africa should consider offering clarity as to whether third-party costs of credit are to be included in the stipulated costs of credit. Clarity should also be given to the considerations when deciding whether a cost forms part of the outlined costs (Section 101(b)-(g)) or not. The exclusion of juristic persons who are consumers of creditors also demands reconsideration, given that not all juristic debtors are stable enough not to desire public policy protection, for they are the country’s future stable debtors. The overarching protection of debtors offered in the Paulsen case also needs revision, as some debtors take advantage of circumstances and leave debts unpaid despite them being reminded of the need to repay.

1.10 Summary

Chapter 1 has laid down the foundation for this study by providing the background, the research questions, and an overview of the methodology, as well as the significance of the study. The next chapter (Chapter 2) introduces the context of the study by discussing the phrase in duplum rule, which comes from the Latin word duplo, meaning double and the codification of the in duplum rule in South Africa. The rule also encourages credit grantors to be more alert of customers who do not service their debts and discourage them from providing reckless credit through the overextension of debtors with limited financial resources. The next chapter presents literature related to the study.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter presents literature aligned to the study. This is achieved by ensuring that the literature addresses the study objectives. Thus, the sections covered includes the nature of credit, credit Interest, The in duplum rule, statutory v Common Law in Duplum, The Codification of the in Duplum Rule in South Africa, problems encountered in enforcing common law in duplum in South Africa, The Promulgation of the national credit Act, the achievements of Statutory in duplum and the defects of section 103(5) of the NCA 176.

2.2 The nature of credit

Credit is usually defined as the ability of a consumer to obtain goods or services before payment. It is based on the hope that the customer will pay in future and dates back to Biblical times (The Bible (RSV) Exodus 22: 25). This opens many opportunities such as educational advancement, economic breakthroughs, development, and improved standard of living (DTI, 2004). Credit does this by enabling consumers who might not afford goods, it could be luxury or basic commodities, and those who need to start businesses to afford to do so even though they do not have the personal funds needed to do so. Credit, thus, improves the lives of customers (Kelly-Louw, 2011; SA Merc LJ, 352). The providing of credit developed from being a practice related primary to people on a social level to becoming a wide income-base for the economies of countries that rely on the income produced by credit.

The collapse of an economy is the proof that the credit industry is not well-regulated and, as such, countries, wants to ensure the regulation of the credit industry (Fratzcher & Lambert, 2016). The legal regulation of the credit industry developed to affect society and protect customers (Maleson, 1959; ALR, 298). Credit, therefore, is currently widely available to all people globally and regulated to ensure its efficiency and growth of economies.

The gains of having a sound credit industry could include being able to provide assistance to customers to acquire assets to exploit economic opportunities and for companies to grow and create employment opportunities (DTI, 2004). The regulation

of credit could be dated as far back as the starting of the providing of credit. The actio redhibitoria and actio quanti minoris are examples of customer credit regulation in the Roman era (Otto, 2010; Fundamina, 258). This regulation has improved over time and has led to the prescription and development of rules (NCA 34 of 2005), rates for returns on credit and regulatory bodies, thus ensuring economic growth on a country scale.

2.3 Credit Interest

2.3.1 The History of Interest

Interest, which is the price of money, has developed over time, and the charge thereof has been present since time immemorial (Verulam Medicentre (Pty) Ltd v Ethekwini Municipality 2005 (2) SA 451 (D) para 15). Christians criticised the charging of interest, as shown in the Bible (The Bible (RSV) Deuteronomy 23:19-20) because they believed in the assistance of one another in society and not the enrichment of the rich at the expense of those who are poor.

According to the Judaic views, Jews could charge interest from foreigners but not among themselves (Vessio The Effects of the in duplum Rule 9, The bible (RSV) Deyteronomy 23:19-20). Receiving interest from another Jew, therefore, is a prohibited act. It is the same thing in Islam if one provides a loan they are entitled to collect only the capital amount from the consumer and nothing more than that (Swartz 2012 African Journal of Business Management). Pakistan was the first Muslim nation to legally declare the charging of modern bank interest as unlawful (Vessio The Effects of the in duplum Rule 14).

2.3.2 The Regulation of Interest

The regulation of interest has existed for 4 000 years with the first enactments found in the Code of Hamurabi. Such regulation aims to minimise the bad situation of the overly indebted from the high costs of credit resulting in poverty. It is guaranteed that the first stage of credit market regulation concentrated on the types of sanctions imposed for the breach of prescribed credit interest rates (Maleson, 1959; ALR, 297).

There are several types of credit interest, including compound interest and nominal interest and could be charged on debt subject to credit regulation. Currently, credit

interest regulation aims to limit over-indebtedness by legalising the rates of credit interest for lenders and enforcing sanctions for the contravention of these rates. A customer is over-indebted if the available information at the time of credit application indicates that the consumer cannot timeously satisfy his/her obligations under the credit contract to which he is a party (Nedbank v National Credit Regulator (662/ 2009 & 500/ 210) [2011]; ZASCA 35 (28 March 2011) para 10).

The Prescribed Rate of Interest Act 55 of 1975 stipulates the percentage of credit interest that can be charged on debt and the consequences for the infringement thereof. Placing a ceiling rate of credit interest begun with the Twelve Tables, which prescribed a ceiling rate and enforced criminal liability in the case of infringement by the usurer. The Islamic rate of stipulated credit interest is fixed at (0) zero, creditor loans are allowed only in the event of dire need, and credit is strongly discouraged to live beyond one's means. The limiting of overcharging credit interest rates is witnessed by the disapproval of usury (Maleson, 1959; ALR, 300) even during Biblical times. In the Israel communities and other nations, a free loan policy also existed to protect credit customers.

Despite these regulations of curbing credit interest rates, customers, however, still need protection from credit providers to ensure debt ease. Ways of debt alleviation and laws to ensure the further protection of customers were designed, including the application of the debt review, in duplum rule, the disclosure, and rearrangement of debt.

2.4 The in Duplum Rule

The in duplum rule means that credit interest on a debt will stop when the total amount of the arrear credit interest has accrued to an amount equal to the outstanding principal debt. The phrase in duplum comes from the Latin word duplo, meaning double (Khaseke, 2008–2010; Kenya Law Review 3).

The rule also encourages credit grantors to be more alert of customers who do not service their debts and discourage them from providing reckless credit through the overextension of debtors' limited financial resources (Kelly-Louw, 2011; SA Merc LJ, 359). It, therefore, is an encouraging method to avoid reckless lending and facilitates the exercise of care in credit lending.

2.4.1 The Application of the Rule

The in duplum rule normally applies to all agreements under which a debt is subject to credit interest at a fixed rate (Schulze, 2006; SA Merc LJ, 427). Because of its foundation in public interest, the in duplum rule cannot be waived, whether before a credit agreement or after (post) a credit agreement. The in duplum rule, therefore, is an exception to the general principle of freedom of credit agreement, as it cannot be excluded by a credit agreement provision (Otto, 2012; Journal of Contemporary Roman-Dutch Law 130). Furthermore, banking practice cannot change the in duplum rule, although the rearrangement of the debt might be accepted. In an attempt to mitigate the effects of the operation of the in duplum rule, a credit provider, therefore, cannot just agree with the consumer that the in duplum rule will not apply to their credit agreement, as such, that contract would be inconsistent with public policy and unenforceable.

The discussion has been raised, however, as to exceptions where the in duplum rule does not apply. This applies to cases where credit interest was mentioned to serve an aim other than the usual function that credit interest fulfils, and where a consumer has been considered as unworthy of protection by the in duplum rule. The discussion, however, was met with criticism, as the system it proposes would necessitate an enquiry into the identity of the credit consumer instead of the nature of the debt (Schulze, 2006; SA Merc LJ, 423). Nevertheless, interest paid periodically and annual income are held as instances in which the in duplum rule does not apply.

It is further argued that the in duplum rule does not apply to interest on the money owed to the revenue authority because those debts arise in operation of statute and not by agreement. Novation, which is a method of replacing a current existing obligation with a new obligation might be allowed. This could be a diversion from the in duplum rule but not necessarily a waiver thereof, as the in duplum rule will continue to operate in the new debt created.

Regarding the surety, which is an additional decoration obligation (Christie *The Law of Contract* 142), there should be a valid principal debt that does not exceed the capital debt for the rule to apply at the defence of surety. Any protection that is available to the debtor is also available to the surety unless they are of a personal

nature to the debtor. In situations where the credit provider does not show the capital debt separately from interest, it does not stand as a defence for the surety to be absolved from payment of debt as long as there is proof of surety (Volkskas Bpk v Meyer 1966 (2) SA 379 (T) 382).

2.4 The Defects of Section 103(5) of the NCA 176.2 The Appropriation of Payments

The freedom of agreement is upheld regarding debt repayment and, as such, a contract between the consumer and credit granter on how funds are to be appropriated to extinguish the debt will also be upheld. The credit consumer can allocate the funds and in the absence thereof, the credit granter will have the right to appropriate (Standard Bank v Oneanate Investments (Pty) Ltd (in liquidation) 1998 (1) SA 811 (SCA) 815).

Regarding situations where no such provision is made in the agreement, the funds will first be appropriated to the interest to curb the continued increase in the credit interests. The presumption (the rule in the Clayton case (Devaynes v Noble (1816) 1 Mer. 572; 35 E.R. 781) that the first item on the debit side is reduced by the first item on the credit side suffices, despite it not being law and only a presumption (Commercial Bank of Zimbabwe v MM Builders and Suppliers (Pvt) Ltd and Others and Three Similar Cases 1997 (2) SA 285 (ZH) 288). The allocation of payments, however, remains a matter of contractual agreement between the parties (Schulze 2006 SA Merc LJ 425).

2.5 Statutory v Common Law in Duplum

Due to the non-stop application of the in duplum rule in many jurisdictions, to make clear and strong customer protection, law makers have codified the rule to strengthen the application of the in duplum rule. The purpose of codification differs from country to country regarding the codification of common law policies that exist. The in duplum rule, in becoming codified, is either reduced or extended in the application, and variations are created thereof.

Statutory provisions are normally viewed to offer better consumer protection than common law provisions. Therefore there are huge differences between the statutory in duplum and the common law in duplum rule. Both the common-law in duplum rule

and the statutory in duplum rule are based on public policy and the focus is to provide financial relief for debtors (Kelly-Louw, 2011; SA Merc LJ, 372).

2.5.1 Application

The statutory in duplum rule only applies to those contracts falling within the ambit of the statute, while the common law rule remains absolute and continues to apply to all other credit agreements not covered by the statute (Vessio, 2010; Obiter, 725). Furthermore, in South Africa, despite the huge span of the credit contracts covered by the statute, the common law will still cover credit contracts that were entered into before the operation of the NCA.

In South Africa, statutory in duplum provides that other fees such as initial and service fees also stop to run (Section 103 (5) NCA). The statutory in duplum rule furthermore does not apply to legal or juristic persons where they are customers under South African law, while the common law rule remains absolute and applies to all other credit agreements not covered by the statute. The outstanding debt per statutory in duplum rule in South Africa, therefore, will reach the limit faster than that per the common law in duplum rule, as the statutory rule will include a huge number of other credit costs (Section 101 (1) NCA).

2.5.2 Waiver

The application of the in duplum rule cannot be waived under the statute in South Africa, as it is based on public policy and exists for the protection of the consumer (Schulze, 2006; SA Merc LJ, 428). On the other hand, the common law in duplum rule, despite also advocating for the non-waiver of the in duplum rule, the courts have been reluctant to sanction waiver in advance of the rule (Local Authorities Pension Fund v Chegutu Municipality HH 115-2006 HC 1885/06). An exception was made on the application of the in duplum rule to tax, but exceptions based on the worthiness of a consumer to be granted protection was disallowed because of the notion that the in duplum rule would then be diverted to an enquiry into the identity of the consumer rather than into the outstanding debt (Schulze, 2006; SA Merc LJ, 423).

2.5.3 Appropriation

Regarding the appropriation of funds to extinguish the debt where no prior agreement exists (which would be upheld by the law) between the credit consumer and creditor grantor, the common-law appropriation first reduces credit interest and then capital suffices. The common-law then provides that credit interest be paid first before the capital amount, the enforceable debt must be paid before the unenforceable debt, the personal debt must be paid before the debt of another, the certain debt must be paid before the uncertain debt, and a more burdensome debt must be paid before a less burdensome debt (Honiball &Nortje, 2014; Without Prejudice 7).Furthermore, the presumption of appropriation first to the reduction of the earliest debit item, which is upheld by the common law, will not apply where the in duplum rule applies because it will enable a debtor to doubly benefit (Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (in liquidation) 1998 (1) SA 811 (SCA) 831).

2.5.4 During and After Litigation

The statutory in duplum rule caps the judgement debt amount to not be more than double the capital debt (De Villiers, 2010; PER 151). Where court proceedings are instituted as per common law, credit interest will stop to run during a trial and restart to accumulate upon judgement on the judgement debt (Schulze, 2006; SA Merc LJ, 427). The credit interest in this regard could once again accumulate until it reaches double the judgement debt, when the operation of the in duplum rules will limit the continued interest accumulation.

So the statutory in duplum rule is not suspended during litigation (Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd 2015 (3) SA 479 (CC) 482). Regarding the statutory in duplum rule, it, however, has been held in this context that a credit consumer will not be exploited where the creditor grantor will be kept out of pocket by being subjected to delays related to legal proceedings.

2.6 The Codification of the in Duplum Rule in South Africa

The in duplum rule states that credit interest due regarding a debt should stop when it reaches the amount of the unpaid capital. This rule has been part of the South African legal from as early as 1830 and it comes from the Roman-Dutch law (Nedbank v National Credit Regulator (662/2009 & 500/210) [2011] ZASCA 35 (28 March 2011) para 36). Officials under the Roman-Dutch law used various ways to limit the credit interest that could be claimed, thereby limiting the greed of credit providers, and the in duplum rule forms part of this effort to restrain. The in duplum rule aims to protect debtors from being continually indebted to credit grantors who fail to insist on timeous debt repayment. In addition, it is a rule founded in public policy to ensure the alleviation of the over-indebtedness of debtors, and cannot be waived, nor are there exceptions to its application (Verulam Medicentre (Pty) Ltd v Ethekwini 2005 (2) SA 451 (D) 454).

2.7 Problems Encountered in Enforcing Common Law in Duplum in South Africa

2.7.1 The Identity of the Debtor

Regarding the common-law in duplum rule, the identity of the credit consumer was an influential factor in examining whether such a credit consumer was worthy of the protection afforded by the in duplum rule. This was viewed in Verulam Medicentre (Pty) Ltd v eThekwini Municipality, (2005 (2) SA 451 (D) 454) where the court of law used the lenient test, which sought to find whether public policy dictated the need for the protection of the credit consumer against exploitation by the credit grantor. The argument that the in duplum rule be lifted because of the ability of the credit consumer to pay the interest was misunderstood from a prior judgement (Commissioner for South African Revenue Service v Woulidge 2002 (1) SA 68 70). It, however, was settled having considered the notion that the prior dicta did not aim that the determination of the identity of a credit consumer be the deciding factor as to the application of the in duplum rule (Verulam Medicentre (Pty) Ltd v Ethekwini Municipality 2005 (2) SA 451 (D) 455). The application of the in duplum rule to all credit consumers, regardless of their financial situation, therefore, was questionable

and gave rise to questions as to which credit consumers were worthy of protection by the in duplum rule regarding their identity or income as juristic or natural persons.

Another issue with the common-law in duplum rule was that the court of law was unwilling to piece together witnesses and introduce the application of the in duplum rule where a party failed to raise the rule as a defence (Kelly-Louw, 2011; SA Merc LJ, 369). The usual lack of relevant information among credit consumers meant that they would be unable to raise the in duplum rule as their defence. Furthermore, that lack of information could consequent the waiver of the debt novation or in duplum rule by creditors in an attempt to escape the operation of the in duplum rule, despite it being guarded as a public policy and not legally subject to waiver (Verulam Medicentre (Pty) Ltd v Ethekwini Municipality 2005 (2) SA 451 (D) 454). Which amounts became subject to the in duplum rule?

In the common law in duplum rule, the accrued arrear credit interest was subjected to the in duplum rule once it reached the capital amount that was borrowed (Sanlam Life Insurance Ltd v South African Breweries Ltd 2000 (2) SA 647 (W) 648) Questions, however, arose in events where the expected interest was argued regarding its payment, and the court ruled that the in duplum rule did not apply. Furthermore, gratuitous transactions were also declared as not being covered by the common law rule (Sanlam Life Insurance Ltd v South African Breweries Ltd 2000 (2) SA 647 (W) 656).

The matter of the fees covered by the common law in duplum rule were often determined on the variation in the transactions on a case-by-case basis, which meant that even though the law wants to achieve uniformity in the application of the common-law in duplum rule, the application had to be decided on a case-by-case basis, depending on the type of debt owed. The sum of the capital debt in the common-law in duplum rule did not include charges or other costs of credit such as debt levies and service fees. The accumulation of credit interest before it, therefore, reached double it would be over a considerable time and as such, credit grantors were not encouraged to institute action towards debt recovery.

2.7.2 Debt Repayment

The issue of debt repayment regarding the in duplum rule has been symbolised by problems regarding the appropriation of amounts towards debt repayment. The capitalisation of credit interest into capital was discredited with the conclusion that interest does not lose its character and nature due to it becoming capitalised (Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd (In Liquidation) 1998 (1) SA 811 (SCA) 828). Furthermore, appropriation as per the legal presumption embedded in the rule in the Clayton case was held inapplicable in situations where the in duplum rule operates. It would result in the double benefit of the debtor where both the debt and interest are extinguished, ultimately resulting in a loss for the creditor who would have invested by lending the money to another.

2.7.3 Pedentelite and Postlite

The running of interest when it equals capital, before litigation, during litigation, or after litigation, has been a major issue regarding the application of the common law in duplum rule. This has been foregrounded by the argument as to whether the delays inherent in court processes would result in disadvantaging the creditor who already was kept out of his money for longer than anticipated, or whether protection should remain biased towards the debtor, who, despite having delayed repayment of the debt, can also take further advantage of the delays inherent in court processes, as the payment of the interest would have been put into abeyance by the in duplum rule.

Where a creditor instituted legal proceedings against a defaulting consumer by issuing a summons, the common-law in duplum rule was suspended and interest would once again accrue on the judgement debt (Kelly-Louw, 2011; SA Merc LJ, 357). Furthermore, case law (Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd (In Liquidation) 1998 (1) SA 811 (SCA) 834) has argued that upon service of the summons, the in duplum rule should be suspended, only resuming upon the judgement of the debt. Thus, the question remains as to whether upon the commencement of the litigation, interest should stop running or continue to run until the duplo is reached. In so deciding, the scale should be tipped towards the party worthy of more protection than the other, between the debtor and creditor.

2.8 The Promulgation of the National Credit Act.

The Cape Usury Act (Act 23 of 1908) could be regarded as a first-generation consumer credit legislation, and the Usury Act (Act 37 of 1926) as the first credit legislation applied on nationally (Otto &Grové *The Usury Act and Related Matters* 24). The Usury Act, which sought to discourage the charging of usurious interest and protect debtors from creditors, was an effort to ensure an efficient credit market and was enacted in 1926 and later replaced by the Limitation and Disclosure of Finance Charges Act, which was, in turn, amended in 1980 to the Usury Act (73 of 1986).

The Usury Act, however, was applied with regard to the Credit Agreements Act (75 of 1980). The application of the two pieces of legislation, which, despite their commendable similarities, also had remarkable differences resulting in confusion as to which act would apply or which definition from which act would apply to which matters (Otto and Grové *The Usury Act and Related Matters* 50). Uniformity, clarity, and simplicity were needed. The NCA thus presented itself as an embodiment of essential credit legislation that was previously provided for by the different acts. The drafters of the NCA tried to incorporate mechanisms to prevent consumers of credit agreements from becoming over-indebted (Kelly-Louw, 2011; SA Merc LJ, 352).

2.8.1 The National Credit Act

The NCA is not an amendment of previous legislation dealing with consumer credit, as it seeks to achieve much more. Instead, it could be said to replace previous consumer credit legislation (Nedbank v National Credit Regulator (662/2009 & 500/210) [2011] ZASCA 35 (28 March 2011)). According to the NCA, the protection of debtors is afforded by provisions aimed at prohibiting the reckless extension of credit (Section 81(3) NCA). It establishes the office of the national credit regulator, debt monitoring, evaluation and advisory services, and referral for review (Section 86 NCA). All these aims of the credit legislation were enacted to enhance debtor protection.

Further, the NCA sought to increase consumer awareness to enable increased consumer protection. As such, it also provided for disclosure to be upheld (Section 92 NCA) in credit transactions regarding interest rates and the continuous issuing of

statements to remind the debtor of his/her credit status. Regarding the interest rate, the Minister of Finance was tasked with publishing the prescribed interest rate (Section 105 NCA) in the government gazette, referring to the Prescribed Rate of Interest Act (55 of 1975).

The NCA is a huge improvement on its predecessors but is not without shortcomings (Otto, 2010; Fundamina 271). It does not protect juristic persons (Kelly-Louw, 2011; SA Merc LJ 359) nor apply to credit agreements before to 2007 (Kelly-Louw, 2011; SA Merc LJ 360) or statutory debt, but applies only to credit agreements falling within the ambit of the act, with the common law in duplum continuing to apply to all other credit agreements (Kelly-Louw, 2011; SA Merc LJ 360).

2.8.2 Statutory in Duplum; Section 103(5) of the National Credit Act

The in duplum rule, which is a provision or a rule aimed at debt alleviation and credit protection, could be said to have been codified by Section 103(5), which provides that:

> *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.*

This provision was a cause of concern in the credit sector. Through Section 103(5), the in duplum rule was not only amended from the common-law provision but was extended (Kelly-Louw, 2011; SA Merc LJ 355). In clarifying the common-law in duplum rule, the statutory provision led to the development of various concerns of stakeholders in the credit industry who considers the statutory form of the rule as unclear and ambiguous (Nedbank v The National Credit Regulator (662/2009 & 500/210) [2011] ZASCA 35 (28 March 2011) para 44).

The recommendation by the South African Law Commission to abolish it seems to have been a recommendation that should have been carefully considered (taking note of how to improve the rule by doing away with previous complications and of the

bias against consumer protection at the given time) rather than one that the legislature should have completely overridden. Further, the lack of clarity regarding the application of the legislative provision and lack of knowledge of the application thereof by both legal practitioners and creditors has led to the rule being inadequately applied and not being welcomed in practice.

2.9 The achievements of Statutory in Duplum

2.9.1 The identity of the debtor, surety and public policy

The issue of the identity of the debtor was settled by the promulgation of the NCA, which stipulated the agreements that the Act would govern and, as such, dismissed all the previous disputes on enquiries to assess whether the debtor was worthy of protection. The Act has made it easily determinable who will be afforded protection by the rule, based on turnover and whether the person is a natural or a juristic person. The public policy ambit of the provision was a further determining factor of the worthiness of a debtor for protection by the in duplum rule where a party is rendered unworthy of protection or where there is no question of a party being sufficiently disadvantaged to invoke the principles of public policy (Verulam Medicentre (Pty) Ltd v Ethekwini Municipality 2005 (2) SA 451 (D) 455).

The determination of the meaning of public policy was a cause for debate in Paulsen. The court had to decide whether the court's jurisdiction was warranted with the consideration of the matter being one of public policy protection, the decision being that where no party is unduly disadvantaged the rule will not be held applicable and public policy principles will not be invoked. The liability of sureties was also settled in the case of Paulsen (which was decided after the promulgation of the NCA), where the appellants objected to being approached before the principal debtor was approached for debt repayment.

It was unchallenged that as per the suretyship, it was necessary to require the principal debtor to extinguish the debt before the surety was approached for the repayment of the debt (Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd 2015 (3) SA 479 (CC) 516). Further, the amount due for repayment by the surety was not questioned, as it was the same amount that the principal debtor was to repay. Thus, regarding suretyship, statutory in duplum followed suit with the common

law in duplum, placing the accessory obligation of the debtor on the surety, with the underlying credit agreement between the debtor and creditor and the deed of suretyship being the founding contracts for the surety's liability.

2.9.2 The Amount Subject to the in Duplum Rule

The statutory in duplum rule also established certainty about the amount capped by the in duplum rule when it reaches double the capital. It is settled that it is accrued arrear interest owed by a debtor. Further, as per Section 103(5), other costs of debt were added to the interest, and these include service fees and collection costs.

The addition of these amounts ensures better consumer protection to the detriment of the credit provider and further ensures that the double is reached much quicker than it would have taken before the enactment of the Act (Kelly-Louw, 2011; SA Merc LJ 370). Creditors are now under more pressure to claim the repayment of debts timeously; otherwise, once the duplum is reached, interest will stop accruing.

2.9.3 Appropriation

The debates surrounding appropriation was also settled by the statutory in duplum rule as per the NCA, which appropriates payment first to due or unpaid interest charges, second to due or unpaid fees or charges, and third, to the principal debt, where no prior agreement as to appropriation was made. Freedom of contract is thus upheld regarding the appropriation agreement between the debtor and the creditor. The stipulation by the NCA of the appropriation did away with the argument about the application of the rule such as occurred in the Clayton case, which would result in double benefit for the debtor.

2.9.4 Pendentelite and Postlite

Regarding the application of the in duplum rule during litigation and after litigation, the case of Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd (in liquidation), suspended the application of the rule before handing down a judgement based on the premise of debtor protection, so that the debt due would not continue to accumulate. A creditor was held as having control over the institution of litigation, which he could exercise by timeously instituting the action to prevent prejudice

towards the debtor (Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd (In Liquidation) 1998 (1) SA 811 (SCA) 834).

The Paulsen case, however, overturned the Oneanate decision ten years later. The majority decision of the court considered that creditors, just like debtors, deserved protection from unruly debtors seeking to benefit from the delays in the court process. It, therefore, was decided that the in duplum rule was not to be suspended but would apply during the duration of the litigation, as it would be unfair to penalise a creditor with the application of the in duplum rule while proceedings were pending and subject him to the delays inherent in litigation.

2.10 The Defects of Section 103(5) of the NCA 176

2.10.1 A lack of clarity

In Nedbank v National Credit Regulator (662/2009 & 500/210) [2011] ZASCA 35 (28 March 200) para 33, the banking association sought for the rule to be clarified. It also wanted to understand whether the NCA provision was an amendment or codification of the common-law rule and the implications thereof regarding the codification and thus, the falling away of the common-law provision. The evident lack of understanding by the legal practitioners and court officials concerned highlighted the danger of the rule being incorrectly applied and, therefore, not attaining its objective (Campbell, 2010; SA Merc LJ 12).

Furthermore, there are numerous drafting errors, untidy expressions, and inconsistencies in the legislation (NCA), which make its interpretation a trying exercise, in addition to the need for a careful balancing of competing interests. The court in Paulsen contended that the weighing of importance of the protection of creditors rather than debtors was a point of personal affiliation by the authorities and that it, therefore, was necessary to maintain neutrality in adjudication. It is noteworthy that the reasonable expectation of a person who grants credit to make a profit and recover his expenses is worthy of protection (Otto &Grové *The Usury Act and Related Matters* 59) and in this regard, the statutory in duplum rule is lacking.

2.10.2 The Amount to which the Rule Applies

The inclusion of other costs of credit in the sum of the debt raises calculation problems and brings about the need for expert evidence to be adduced (Campbell, 2010; SA Merc LJ 12). The complexity of the calculations which is a laborious task, stands to prolong trials as evidence regarding the sum of the debt that must be adduced. Practitioners who do not understand how to do the calculation or even the rule itself could confound the confusion of their ill-educated clients, marring the process with imprecision.

Further, to be more specific, it is questionable as to where the additional costs of credit list ends, and whether the determination of those amounts included is not also subject to the circumstances of each case. The lack of clarity suggests that the law is neither predictable nor certain. The calculation of the debt and the interest due is thus a cause for concern, and for the NCA to be efficient, revision thereof is necessary.

2.10.3 Knowledge of the Existence of the Rule

The in duplum rule is a technical legal rule not widely known among consumers (Campbell, 2010; SA Merc LJ 12). This lack of knowledge of the existence of the rule by consumers is a major challenge to its application. The legislative duty of disclosure in credit agreements (Section 92 NCA) despite being a hallmark educative attempt aimed at consumer protection, is not an easy duty to discharge and its success will be determined only over time. The NCA will also assist only those already in debt and it will leave other abuses unchecked; thereby, questioning the cliché of prevention being better than cure (Swartz, 2012).

2.10.4 Debt Alleviation

Despite the NCA's extension of the commonlaw in duplum rule, it, however, does not prevent the creditor from collecting double the unpaid capital amount provided that, at no time the creditor allows the unpaid arrear interest to reach the unpaid capital amount (Margo v Gardner (564/09) [2010] ZASCA 110 (17 September 2010); Kelly-Louw 2013 SA Merc LJ 356).The rule, therefore, cannot shelter those debtors who repay their debts timeously.

2.10.5 Change in Time

The in duplum rule does not address current global financial realities because the cost of credit has increased and there is an increase in the dishonesty of present-day debtors. Further, interest rates now depend on principals of supply and demand rather than on the moral considerations that applied in the past (Sanlam Life Insurance Ltd v South African Breweries Ltd 2000 (2) SA 647 (W) 648). In the event of inflation, the in duplum rule stands to leave the creditor in dire loss, and in modern commerce, the rule serves to allow dishonest debtors to escape their obligations instead of alleviating their plight.

2.11 Summary

The protection afforded by the in duplum rule has a far broader basis than merely preventing a creditor from purposefully delaying bringing suit to gain huge sums of money (Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd 2014 (4) SA 253 (SCA) para 79). By providing for the rule, (Section 103(5) NCA) the legislature had in mind the protection of the consumer, who might, under the commonlaw rule, end up paying much more than the capital originally owing (Nedbank v National Credit Regulator (662/2009 & 500/210) [2011] ZASCA 35 (25 March 2011) para 49). This then raises questions as to whether the objects of the enactment of Section 103(5) have been fulfilled. Case law suggests that the rule is complex and its application will be determined on a case-by-case basis, dependent on the merits of each case. The discrepancies in the rule's interpretation and application prove that, in certain circumstances, the court has departed from what the legislature intended (Verulam Medicentre (Pty) Ltd v Ethekwini Municipality 2005 (2) SA 451 (D) para 8).

Effective codification is thus highly questionable, as the problems that marked the application of the rule as per common law have been carried over into the legislative in duplum rule, and if anything increased, complex calculations became part of the application. The rule also allows dishonest modern debtors to escape their obligations rather than alleviating their over-indebtedness (Sanlam Life Insurance Ltd v South African Breweries Ltd 2000 (2) SA 647 (W) 647). Notably, despite the purpose of the rule to protect debtors from having to pay more than double the capital, it is not aimed at punishing investors who are entitled to more than double

their investment because the addition of interest to their capital investment would provide such a result.

This shows that despite the good intentions of those who famed the legislation, it runs counter to public policy, as it gives rise to the unfair treatment of creditors who are ill protected by it. The point has frequently been made that there is a need for creditor protection as much as there is a need for debtor protection. Thus, one might wonder if the initial recommendation to abolish the rule should not have been accepted rather than ignored (considering the ill recognition of consumer protection at the time). In the alternative, the rule could have been left as it was, rather than developing it in the direction of confusion. It is noteworthy; however, that the abolition was advocated at a time when consumer protection was not thought of as important as it is today when consumer protection is considered of the utmost importance. It is unlikely, however, that the rule will be amended unless major role players show that they are experiencing serious problems in applying it (Otto, 2012). The next chapter presents research design and methodology.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

The purpose of this chapter is to outline the approach, design and process followed in conducting this research study. The research methodology adopted in this study was aimed at gaining enhanced understanding of the notion of in duplum rule and reckless lending under NCA and the impact it has on credit agreement within South Africa, through answering the research questions outlined in Chapter 1, supported by the literature review discussed in Chapter 2.

3.2 Research design

Collis and Hussey (2003) defines research design as the science and art of planning procedures for conducting research studies so as to get the most valid. The end-product of research design is a plan or blueprint for conducting the intended research (Babbie & Mouton, 2009). According to Wiid and Diggnes (2010) such a blueprint or plan for the intended research study is used to guide data collection and analysis. In essence, the research design focuses on the kind of study being planned, kind of results being aimed at, and the evidence required in adequately addressing the research questions. As discussed in the subsections below, this study was exploratory and qualitative in nature approached from a phenomenological paradigm, with the purpose of assessing the notion of in duplum rule and reckless lending under NCA and the impact it has on Credit Agreement within South Africa.

3.3 Research approach

The choice of research design appropriate for a study is based on the fundamental objective or purpose of the research, as well as the intended use of the research findings and recommendations (Kolb, 2008). There are various research designs that can be adopted in a study and these research designs can be classified into three main categories: exploratory, descriptive and causal (Collis & Hussey, 2003; Babbie & Mouton, 2009; Kolb, 2008; Wiid & Diggines, 2010). Exploratory studies aim to acquire insight and develop understanding than to collect accurate, replicable data (Wiid & Diggines, 2010). Descriptive research goes further in examining a problem than exploratory research since descriptive research is undertaken to ascertain and

describe the characteristics of the pertinent issues (Collis & Hussey, 2003). Causal studies are done mainly with the purpose to reveal cause and effect between the dependent and independent variables. In essence, exploratory research attaches meaning to variables; descriptive research often reveals possible links between particular variables; while causal research confirms and describes the relationship between variables or shows such relationship to be false (Wiid & Diggines, 2010). Differently stated, exploratory research proposes new theories; descriptive research tests theories; while causal research reinforces theories.

This study adopted an exploratory research approach considering that the study was conducted to increase knowledge of the phenomenon of in Duplum Rule and reckless lending under NCA. Unlike descriptive and causal research approaches, exploratory research looks for patterns or ideas, rather than testing or confirming a hypothesis (Wiid & Diggines, 2010). This characteristic of exploratory research would be effective in achieving the main objective of this research, which was to explore the notion of in duplum rule and reckless lending under NCA and the impact it has on Credit Agreement within South Africa. Considering that in duplum rule as a discipline, is not yet well researched within individuals, exploratory research was most suitable approach of three approaches considered. Barbie and Mouton (2009) asserts that exploratory research is best suitable when a research seeks to increase new knowledge.

3.4 Research Philosophy

Any research study is underpinned by a paradigm, which relates to philosophies and assumptions about what constitutes valid research and which research methods are appropriate for the development of knowledge (Collis & Hussey, 2003; Gray, 2013). There are two main research paradigms with worldviews having opposing assumptions about reality and view of the world; namely, positivistic paradigm and phenomenological paradigm (Keele, 2011). The premise for a positivistic paradigm is that reality exists external to the researcher and must be investigated through the rigorous process of scientific inquiry (Gray, 2013). This paradigm seeks the facts and causes of phenomena, with little regard to the subjective state of individuals (Collis & Hussey, 2003). In contrast, the premise for phenomenological paradigm is that an essential aspect to creating truth and meaning is the interaction that the subject has

with the world (Gray, 2013). Thus a phenomenological paradigm is concerned with understanding human behaviour from the participants' own frame of reference (Collis & Hussey, 2003).

This research study was conducted from a phenomenological paradigm with the aim of exploring in duplum rule from secondary literature. Phenomenological approaches are based in a paradigm of personal knowledge and subjectivity, and emphasise the importance of personal perspective and interpretation (Collis & Hussey, 2003). Thus in-depth records on of in duplum rule formed a critical part of this study. Streubert-Speziale and Carpenter (2003) defines epistemology as the research of philosophy concerned with how individuals determine what is true (Streubert-Speziale & Carpenter, 2003). This study explored the "truth" that leads or would lead to a clearer understanding of in duplum rule.

3.5 Research Method

The two main research methods available for use in research studies are quantitative and qualitative. Quantitative research aligns with the positivistic paradigm, whereas qualitative research is most closely aligned itself with the phenomenological paradigm (Keele, 2011; Gray, 2013). Quantitative research relies on numbers, measurements and calculations, and tends to be more highly structured and scientific in approach than qualitative research (Wiid & Diggines, 2010). In contrast, qualitative research relies on detailed description by respondents to gain insight into a particular problem (Wiid & Diggines, 2010). Qualitative research is a more systematic, subjective approach towards problem solving and tends to be less structured than quantitative research (Keele, 2011).

This study followed a qualitative method. According to Krause (2005), qualitative research has the unique goal of facilitating the meaning-making process, and this goal is aligned with the aim of this study which was to seek the meaning of in Duplum Rule and reckless lending under NCA and the impact it has on Credit Agreement within South Africa, a qualitative research would also help build on the lack of theory that currently exists in this research area.

The basic nature of the information being collected will be from secondary sources including but not limited to the Internet (financial, SAFLII, LexisNexis website) and South African case law and credit management publications. Relevant legislatures

regarding credit agreements and laws of contract will be collected from published texts. This will also include (published texts) collected from debt counsellors, professionals in the field of credit agreement, contractual laws, and private sector institutions' annual reports involved in various aspects of the NCA and credit agreements.

Secondary data were collected from the following sources:

- Books articles
- South African cases
- International and foreign cases
- Reports and government gazettes
- Web sites

The National Credit Act is not an amendment of previous legislation dealing with consumer credit, as it seeks to achieve much more than that. Instead, it could be said to replace previous consumer credit legislation (Nedbank v National Credit Regulator (662/2009 & 500/210) [2011] ZASCA 35 (28 March 2011)). According to the NCA, the protection of debtors is afforded by provisions aimed at prohibiting the reckless extension of credit (Section 81(3) NCA). It establishes the office of the national credit regulator, debt monitoring, evaluation and advisory services, and referral for review (Section 86 NCA). All these aims of the credit legislation were enacted to enhance debtor protection.

To create a single view of the credit terms used, the NCR articulated some definitions to ensure that all users of the information have a similar understanding of the terms used. As such, the study used the NCR definitions illustrated in Table 1.

Terms used and definitions

Terms	**Definitions**
Agreement	Includes an arrangement or understanding between or among two or more parties, which purports to establish a relationship in the law between those parties.

Consumer or customer	Regarding a credit agreement to which this Act applies means: (a) the party to whom goods or services are sold under a discount transaction, incidental credit agreement, or instalment agreement; (b) the party to whom money is paid, or credit granted, under a pawn transaction; (c) the party to whom credit is granted under a credit facility; (d) the mortgagor under a mortgage agreement; (e) the borrower under a secured loan; (f) the lessee under a lease; (g) the guarantor under a credit guarantee; or (h) the party to whom or at whose direction money is advanced or credit granted under any other credit agreement.
Credit:	When used as a noun means: (a) a deferral of payment of money owed to a person, or a promise to defer such a payment; or (b) a promise to advance or pay money to or at the direction of another person.

3.4 Research Design and Methodology

A few pragmatic studies exploring the in duplum rule and reckless lending in South Africa were completed and this has given birth to the current study. This research, therefore, will be an exploratory study. The purpose of exploratory research is to identify variables or concepts worth pursuing (Babbie, 2004). Cobb and Forbes (2002) stated that in exploratory research, researchers must resist the temptation of pre-specifying their study population because this could lead to key informants being overlooked in the process of data collection. Bless and Higson-Smith (1999) have put their weight behind the above academics by adding that exploratory research aims to gain insight into a situation, phenomenon, community, or person. The study, as has been mentioned before in the earlier chapters, aimed at gaining insight into the in duplum rule and reckless lending.

The study adopted qualitative research methods, as it was concerned with information about things that are less easily understood by counting them. Qualitative research is about developing a detailed understanding of individuals' (specialist) views, attitudes, and actions (Cresswell, 1994). According to Marshall and Rossman (2006), qualitative research takes place in the natural world, uses multiple interactive and humanistic methods, focuses on context, is emergent rather than tightly prefigured, and is fundamentally interpretive. Bell (2001) also posited that researchers adopting a qualitative perspective are more concerned to understand the context. They seek insight rather than statistical analysis.

Table 2 highlights three distinct differences between quantitative and qualitative data.

Differences between Quantitative and Qualitative Data

Qualitative Data	Quantitative Data
• Based on meanings expressed through words	• Based on meanings derived from numbers
• Collection results in non-standardised data requiring classification into categories	• Collection results in numerical and standardised data
• Analysis conducted using	• Analysis conducted using diagrams and

conceptualisation	statistics

Sources: Developed from Dey (1993); Healey & Rawlinson (1994)

The qualitative research method was chosen because of what is mentioned in the right column of Table 2. The researcher paid due attention to how data collected will be analysed, which is through the content analysis method to be shortly discussed later in this study.

Content analysis (CA) is a research methodology to make sense of the (often unstructured) content of messages – be they texts, images, symbols or audio data. In short it could be said to try to determine textual meaning. It is only one research methodology that promises to do this, as there are numerous other analyses dealing with text, messages and its content and meaning (such as conversational, rhetorical or discourse analysis). However, content analysis is distinct, for several reasons, as can be noticed in one often-cited definition: *it is "a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use"* (Krippendorff, 2004). This stresses the inferential nature of content analysis: the fact that through an inductive, deductive, or abductive process, conclusions are drawn from certain premises and samples. Content analysts therefore typically use some guidelines for inference (based on existing theories, previous research, or experience) and strict procedural (coding) rules to move from unstructured text to answers to their research questions (White & Marsh, 2006). During this process, due attention is given to the context wherein these messages are embedded: two similar sentences can mean different things in different surroundings.

A common distinction in social sciences, which also applies to content analysis methods, is between qualitative and quantitative analyses. Problematically though, this dichotomy can be understood in multiple ways, which in itself can be a source of confusion, but the various ways of defining what counts as qualitative and quantitative also blur the frontiers of what can be considered as content analysis. The dichotomy is first of all applicable to approaches within the container of content analysis itself – if we delineate it from other textual analyses. Hence, even after distinguishing content analysis from other methodologies, it can flexibly be applied in a quantitative or qualitative setting (White & Marsh, 2006).

Secondly, some authors equate the word “qualitative” with “interpretive”, given that content analyses in general focus on meaning and context. The dichotomy in this sense is between content analysis as a systematic, rudimentary, quantitative approach, and other approaches that are more qualitative or interpretative (Neuendorf, 2001).

3.5 Access and Ethics

Access and ethics are critical aspects to conduct of any research (Saunders et al., 2003). It requires careful attention at the onset of any research project. Ethical considerations were considered in this study. The dissertation involved case law and statutory law; therefore, ethical consideration was not that much the issue because the researcher dealt with public knowledge (Patton, 2002). A detailed ethics application (through the Rig online application form, see appendix F) was made to the University of Kwa-Zulu Natal, Graduate School of Business and Leadership and approved. This section, therefore, gives a brief account of how these issues were approached in this study.

Authorisation was given in the form of a letter (see Appendix C) from the University of Kwa-Zulu Natal. After receiving approval from the University of Kwa-Zulu Natal, the researcher collected all the relevant published court cases, the NCA, and specialist published articles.

In the context of this research, ethics refers to the appropriateness of the researcher’s behaviour regarding the collection of the required data. Wells (1994) defined ethics as a code of behaviour appropriate to scholars and the conduct of research. One of the biggest tenets of ethics is the issue of consent and confidentiality.

3.6 Limitations to study

The limitation to this study was the inability to interview credit law specialist to seek their perspectives into challenges regarding the correct application of the statutory and common law in duplum rule. It must be pointed out here that failure to establish contact with these specialist was a significant constraint in that they charge

exorbitant consultation fees and they are unwilling to be involved in academic activities.

3.7 Summary

This chapter introduced the research strategy and processes adopted for the successful completion of the study. The issue of access and ethics were adequately discussed in this chapter, as they form an integral part of this study. It has given reasons why the qualitative research method was adopted ahead of the quantitative one. It, therefore, laid a foundation for the following chapter, which will be the discussion of the findings from the study.

CHAPTER FOUR: RESULTS, CONSUMER CREDIT LEGISLATION

4.1 Introduction

This chapter presents the findings from the perusal of secondary data. As mentioned in the chapter 3, analysis was from literature review, secondary data were collected from the, books articles, South African cases, international and foreign cases, reports and government gazettes and web sites.

4.2 Credit Agreements Act and Usury Act

The current South African credit legislation covers four types of contracts: purchase and sale, lease, money loans, and contracts for the rendering of services (Grové & Otto, 2002). The Credit Agreements Act regulates credit transactions such as the sale of goods on instalments or rendering of services on instalments and leasing transactions (Grové & Otto, 2002). The Usury Act applies to money-loans, credit, and leasing transactions (Otto, *Credit Law Review* para 46,).

Section 1 of the Usury Act defines a money lending transaction as a transaction that, whatever its form and whether it forms part of another transaction, is substantially one of money lending. One of the principal purposes of the Usury Act is to limit the finance charges, which could be recovered by a creditor from a debtor in a money lending transaction (Otto, *Credit Law Review* para 52). The Usury Act currently controls the interest rates or finance charges that might be levied in a credit agreement; the Act, however, is not exhaustive (Otto, *Credit Law Review* para 58).

This does not mean that where the credit agreement or transaction does not fall within the scope of the Usury Act, there is no limit as to the interest rates that might be charged. The common law on contracts comes into play in this regard. This area of the common law might declare a contract void if it is construed as being against public policy or contra bones mores (Eastwood v Shepstone 1902 TS 29).

The onus to prove that a rate of interest is too high or usurious is on the debtor (Reuter v Yates 85). Although a court will loath to interfere with a contractually agreed rate of interest, it will also not allow a usurious rate to be charged (Dyason v Ruthven 310). The Usury Act provides for maximum finance rates that could be charged in money lending, leasing, and credit transactions (Section 2). The

differences between the two Acts, besides that only the Usury Act covers money lending transactions, are sometimes inconsistent. Which Act applies depends on each circumstance. This placed a difficult burden on the shoulders of both businesspersons and lawyers.

4.3 The National Credit Act, 2005

The following, taken from the August 2003 Consumer Credit Review, which was requested by the Department of Trade and Industry, reflects the current mood:

The need for a review of the consumer credit legislation has long been recognised. There is a broad agreement that current laws are weak and outdated; they reflect the political reality of the apartheid era. The Department of Trade and Industry made certain changes to address specific problems such as increasing the protection on micro-loans, one change that was introduced in the revised exemption notice. The approach has, nevertheless, been a piecemeal, and a thorough and holistic assessment became essential.

The publication of the Consumer Credit Bill of 2004 was intended as a practicable reflection of the call for more prominent progresses in the consumer protection and, more specifically, in the credit consumer protection field. The purposes of the Act, when enacted, are to, inter alia, advance the social and economic welfare of South African citizens by promoting a fair and transparent and competitive credit market together with a sustainable and responsible credit industry.

4.3.2 The National Credit Act and the Limitation on Interest

Part C of Chapter 5 of the NCA of 2005 is entitled 'Consumer's Liability, Interest, Charges and Fees'. The limitations of finance charges or interest will, in future, if the Bill is passed, be almost completely regulated by the clauses found in Part C of the Bill. This includes the limitation on the consumer's liability regarding certain charges, cost of credit, maximum rates of interest and fees, interest, credit insurance, fees or charges, and changes to credit fees or charges. Clause 103 codifies the in duplum rule and is incorporated in Part D of the Act.

Clause 101 sets out the cost of credit and determines that the credit provider cannot charge the consumer any money or consideration other than the principal debt

together with the value of any item contemplated in Clause 102. The items include an initiation fee and service fee both of which cannot exceed the prescribed amount relative to the principal debt and interest, expressed in percentage terms as an annual rate that must not exceed the maximum prescribed rate, which is determined by the Minster by regulation.

The interest rate, which is then applicable, as determined by the Minster, applies equally to any part of the unpaid principal debt and to any amount that is overdue under the agreement.

4.3.3 Clause 103(5) of the National Credit Act, 2005

Clause 103(5) of the NCA, 2005 reads as follows:

> *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.*

The amounts that are referred to in Clauses 101(1)(b) to (g) include initiation fees, service fees, interest, credit insurance, administration charges in case of default, and collection costs. All these charges are subject to their internal precincts. In aggregate, however, they cannot exceed the principal debt plus any item listed in Clause 102(1).

4.4 Reckless credit, Section 80 of National Credit Act

Agreement was reckless if, at the time the agreement was made when:

- the credit provider failed to take reasonable steps to assess the proposed consumer's:
  - general understanding/appreciation of risks and costs of credit and his rights and obligations; debt re-payment history under credit agreements;
  - existing financial means, prospects, and obligations;

- Whether there is a reasonable basis to conclude that any commercial purpose might be successful if the consumer has such a purpose for applying for credit.
- or the credit provider made such assessment and entered into agreement, despite that:
  - the consumer did not understand/appreciate the risks, costs, or obligations; or
  - Entering it would make consumer over-indebted.

The person making the determination must apply the above criteria as they existed at the time agreement was made.

Complete defence for a creditor to an allegation of reckless credit applies if:

- the creditor establishes that the consumer failed to fully and truthfully answer any requests for info made by the creditor as part of the compulsory assessment; and
- a court or National Consumer Tribunal determines the consumer's failure materially affected the creditor provider to make a proper assessment.

The court could suspend reckless credit agreement in any court proceedings in which a credit agreement is being considered. If declared reckless, it could:

- set aside all/part of the obligations; or
- suspend the force and effect of the agreement.

When court declares recklessness, it must also consider whether the consumer is over-indebted. If over-indebted, the court could:

- suspend the force and effect of the agreement; and
- restructure the consumer's obligations to the NCA.

Before the court orders over-indebtedness, it must consider:

- the current means and ability at the time the agreement was made; and
- the expected date when obligations under agreement will be fully satisfied, assuming the consumer makes all the required payments as per any proposed order.

4.5 Clause 76 of the Consumer Credit Act, 2004

Despite any other provision of the law or a credit agreement, the maximum liability of a consumer under a credit agreement to the credit provider, irrespective whether the consumer fulfils all of the obligations under that agreement, or defaults on any such obligation, must not exceed the total of:

(a) the principal amount deferred under the agreement;

(b) any applicable amounts permitted in terms of:

(i) Sections 79(b), (c) and (e); and

(ii) This Act to be charged to the consumer in event of prepayment, collection or enforcement; and

(c) Interest as calculated as per Section 79, subject to a maximum aggregate interest not exceeding the principal amount deferred under the agreement.

The problem with Clause 76 seemed to lie with the ambiguous meaning of the word aggregate in Clause 76(c). There being no correlative definition in Chapter 1, one must turn to the Oxford Dictionary definition, which tells us that aggregate means the "sum total or amount assembled". If "amount assembled" is taken to mean the unpaid interest amount, then there would have been no contradiction with the current common law interpretation of the in duplum rule. Had the word aggregate been taken to mean interest in total or sum total that is interest paid or unpaid, it, however, would not only conflict with the current in duplum rule but also provide problems for the credit industry as a whole. A strict rule such as this would seriously have curtailed the amount of finance charges that credit grantors might charge on their trade in stock – money. This could have led to a possible massive withdrawal of credit supply by investors, if their investments were caused by this legislation, to be curtailed.

Clause 103(5), however, still leaves much to be considered by the courts. The clause states that despite any common law provision, the amounts contemplated in Clause 101 (b) to (g), which becomes in total an accrued but arrear amount, cannot exceed the principal debt. This could be ascertained from the words "as at the time that the default occurs". The position differs from the common law arrangement and,

in effect, renders the rule more severe regarding the limitation on the credit consumer's liability. The cases that ruled on the in duplum rule referred to either "unpaid capital" or "unpaid principal debt". No explanation was given for these terms, as perhaps, none was foreseen required, considering that these terms were used in the Usury Act and essentially, accepted by the credit community. Clause 103(5) limits not only interest when it reaches the amount of the principal debt, but interest plus the initiation fee, service fee, cost of credit insurance, default admin charges, and collection costs together, when in arrears, cannot amount to more than the principal debt.

Clause 103(5) is much clearer and less convoluted than its not long-lived predecessor, Clause 76 of the 2004 Act. Clause 103(5) defines principal debt as one that can easily conclude what is included and what is excluded from principal debt by the definitions clause and Clause 101(1) (a) and 102. Furthermore, Clause 103(5) determines exactly which values, besides interest, cannot exceed, when in arrears, the unpaid principal debt. The problem with this clause might not lie with its interpretation because Clause 103(5) is not a true reflection of the actual in duplum rule as developed by the courts. The common law in duplum rule does not contemplate an initiation fee, service fee, cost of credit insurance, default admin charges, and collection costs in calculating the interest limitation.

This clause, therefore, provides a greater limitation on interest as that envisioned by the common law. The credit-grantor would consequently find greater restriction in the above clause as to what he might retrieve from the defaulting debtor. The source of these inclusions is unknown; the common law is certainly not the beck. The difficulties that, therefore, could be anticipated as per Clause 103(5) are its application regarding the construal of the common law in duplum rule, as it already exists, and because the limitation of accrued amounts is not limited to interest but to other costs and charges contemplated in the Act. The logistics surrounding interpretative issues should be scaled down to a minimum because the rule, as represented in its Clause 103(5) format, is now closer to its common law counterpart. Attorneys and legal advisors (and judges) could use the existing common law elucidation as a precedent and or guideline.

4.6 Conclusion

Credit law aims to regulate the relationship between the debtor and creditor. Both parties need protection in some or other form. Both legislation and the common law, therefore, have become indispensably executive in the sphere of consumer credit and lending. Interest and the law on interest form critical elements. Lending, at a price, has become a commercial reality and is intrinsically entwined in daily economic activities. Interest rate caps was, accordingly, for many years, incorporated in legislation as forms of consumer protection and preventative measures of the overextension of consumers. Accordingly, the common law, inter alia, has developed, fostered, and preserved one rule that lends a helping hand in regulating the control over interest rate charges.

The in duplum rule is a fastidious consumer protection mechanism. Based on sound public policy rationale, the rule does not prevent the creditor from obtaining all his/her allowable charges for money loaned or credit extended. It does force the creditor to act with sound fiscal discipline, timeously, as against the debtor. Despite the creditor not acting within a reasonable time against the debtor, it, however, still does not place a total limitation on the amount that a creditor might extract from his/her debtor. The in duplum rule only limits interest from running temporarily. The only type of interest that might be susceptible to the in duplum rule is arrear accrued interest, that is, interest that is owing and payable. Once the debtor initiates payment again, such payment will decrease the interest element of the total amount and interest will run again. It, therefore, is impossible for a court to foretell what the maximum amount of interest will be. This is not the function of the in duplum rule. It does not cap the interest in to. The in duplum rule must be understood as a consumer protection regulator. It stops arrear interest from running when that interest has reached the amount of unpaid capital. It does not set a maximum amount of interest. The next chapter presents discussion of findings.

CHAPTER FIVE: DISCUSSION OF FINDINGS

5.1 Introduction

This chapter presents the discussion drawn from the findings. It is critical to note that the common-law in duplum rule, as it is generally known in South African law, provides that interest stops running when unpaid interest equals the outstanding capital amount. If the total amount of unpaid interest (both contractual and default interest: the courts apply the limitation to both kinds of interest) has accrued to an amount equal to the outstanding capital sum, the defaulting debtor (i.e., the borrower of the money) must first start making payments on his loan again (and so decrease the interest amount) after which interest might once again accrue to an amount equal to the outstanding capital sum (Stroebel v Stroebel 1973 (2) SA 137 (T); Administrasie van Transvaal v Oosthuizen & 'n Ander 1990 (3) SA 387 (W)). The rule, therefore, effectively prevents unpaid interest from accruing further once it reaches the unpaid capital sum. Even if interest is capitalised, and interest, therefore, is charged on interest, the capitalised interest does not lose its character as interest and becomes part of the capital amount to apply the in duplum rule (Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd 1995 (4) SA 510 (C), in particular at 560 and 566-72; confirmed on appeal in Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (in liquidation) 1998 (1) SA 811 SCA; unless otherwise indicated, all further references to Standard Bank v Oneanate Investments will be to the decision on appeal).

The common law in duplum rule, therefore, implies that the total amount of unpaid interest on a loan or credit transaction could accrue only to an amount equal to the outstanding capital sum, and that all arrear interest ceases to run when that interest has reached the outstanding capital amount (Sanlam Life Insurance Ltd v South African Breweries Ltd 2000 (2) SA 647 (W) at 652G-I). The rule does not mean that a creditor (i.e., the lender) is prevented by the rule from collecting more than double the unpaid (or paid) capital amount in interest, as long as he, at no time, allows the unpaid interest to reach the unpaid capital amount. Should this escalation occur, interest, however, would cease to run. Once payments on the account are again made and the interest element of the total amount owed is decreased, the interest can start running again until it equals the outstanding capital (Monica L Vessio A

Limit on the Limit on Interest? The in duplum Rule and the Public Policy Backdrop (2006) 39 De Jure 25 at 26 and 36). It, therefore, is clear that the rule only prevents the interest from running temporarily and does not set a maximum amount of interest that might be charged. It is settled that the common-law in duplum rule forms part of the modern South African law (Union Government v Jordaan's Executor 1916 TPD 411; Van Coppenhagen v Van Coppenhagen 1947 (1) SA 576 (T)).

In the recent past, there were several decisions dealing with and explaining the application of the common-law in duplum rule. For example:

- The Commercial Bank of Zimbabwe Ltd v MM Builders & Suppliers (Pvt) Ltd & Others & Three Similar Cases 1997 (2) SA 285 (Z);
- Standard Bank v Oneanate Investments supra;
- Bellingham NO v Clive Ferreira & Associates CC 1998 (4) SA 382 (W);
- F & I Advisors (Edms) Bpk & 'n Ander v Eerste Nasionale Bank van Suidelike Afrika Bpk 1999 (1) SA 515 (SCA), discussed by WG Schulze Can a Borrower Waive the Benefits of the In Duplum Rule? (1999) 11 SA Merc LJ 109;
- Sanlam Life Insurance v South African Breweries supra; ABSA Bank v Leech supra; Commissioner,
- South African Revenue Service v Woulidge 2002 (1) SA 68 (SCA); Meyer v Catwalk Investments 354 (Pty) Ltd & Andere 2004 (6) 107 (T); and Verulam Medicentre (Pty) Ltd v Ethekweni 2005 (2) SA 451 (D), discussed by Vessio op cit, and its appeal sub nom Ethekwini Municipality v Verulam Medicentre (Pty) Ltd [2006] 3 All SA 325 (SCA), both decisions analysed by WG Schulze The in duplum Rule: A Short List of Some Unresolved Issues (2006) 18 SA Merc LJ 486 and Heinrich Schulze Are there Exceptions to the in duplum Rule? (2006) 14 Juta's Business Law 20).

The in duplum rule is based on public policy, as its purpose is to protect the debtor from exploitation by the creditor (Standard Bank v Oneanate Investments supra at 828D; and Vessio op cit at 35–6 for a discussion of the role of public policy and consumer protection in the rationalisation of the perpetual application of the rule). It has been held that this rule is part of the daily economic life where it fulfils the useful function of assisting debtors in financial difficulties (LTA Construction v Administrateur, Transvaal supra at 482E-F). The rule protects a debtor who is in

financial difficulty and unable to service his debts from an ever-increasing accumulation of interest. The rule prevents the overextension of a debtor's limited financial resources. It, however, provides him with temporary relief only, as the escalation of the ever-continuing interest is merely tempered by the rule (Vessio op cit at 36).

The common-law in duplum rule is not limited to interest on money-lending transactions. In fact, it applies with equal force to all types of contracts as per which capital sum is due by the debtor to the creditor and on which amount a specific rate of interest is payable. One such an example is where a debtor owes money to a creditor as per a contract of letting and hiring of work on which interest is payable (LTA Construction v Administrateur, Transvaal supra at 482I-483A; GF Lubbe Die Verbod op die Oploop van Rente ultra duplum – n Konkretisering van die Norm van Bona Fides? (1990) 53 Tydskrif vir Hedendaagse Romeins-Hollandse Reg 190 at 200; Schulze (2006) 14 Juta's Business Law 20 at 20; Schulze (2006) 18 SA Merc LJ 486 at 487; and Vessio op cit at 26-7).

Until now, debtors could rely only on the common law in duplum rule to protect them from exploitation by their creditors. From 1 June 2007 (Proc 22 in Government Gazette 28824 of 11 May 2006) they, however, could rely on the protection afforded by the statutory in duplum rule as set out in Section 103(5) of the NCA 34 of 2005. The statutory rule drastically alters the common-law rule and provides better protection for debtors (or rather, for the consumers of credit: the term consumer is used in the Act to describe a debtor and it will so be employed here) against their creditors (or rather, credit providers, the term used in the Act). This analysis sets out briefly to explain the practical application of the new statutory in duplum rule and address certain problems that credit providers might experience when the rule is applied. A few of the differences and similarities between the statutory rule and the common law rule will also concisely be highlighted here.

5.2 The Statutory In Duplum Rule

5.2.1 The General Principles and Application

Section 103(5) of the NCA contains the statutory rule. It provides as follows:

Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in Sections 101(1) (b) to (g) that accrue during the time that a consumer is in default under the credit agreement cannot, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the defaults occurs.

Briefly, the statutory in duplum rule provides that when a consumer of credit is in default, all the combined amounts set out in Sections 101(1)(b) to (g) (i.e., the costs of credit) cease to run when they reach the outstanding balance of the consumer's principal debt at the time of the default. To understand this statutory rule fully, one must establish to what exactly "the amounts contemplated in Section 101(1) (b) to g)" refers. They are:

• **Initiation fees** (Section101 (1) (b); and see also reg 42(2) (Table B)) of the National Credit Regulations of 2006 (GN R489 in Government Gazette 28864 of 31 May 2006 ("the Regulations"): the maximum limits that apply to the initiation fees that might be charged as per the seven types of credit agreement, and reg 41(1): the dates upon which an initiation fee may be levied);

• **Service fees** (Section101 (1) (c); reg 44: the maximum monthly and annual service fees that can be charged);

• **Interest** (both contractual and default) (Section101(1)(d); reg 42(1)(Table A) read with S105: the maximum prescribed contractual interest rates that can be charged on the seven types of credit agreement; S103(1): stipulating that the maximum interest rate applicable to the principal debt set out in reg 42(1)(Table A) also applies to the maximum default interest that can be charged on a specific credit agreement; and reg 40: the interest calculation that should be done);

• **Costs of any credit insurance**, including the credit insurance premiums payable (Section101(1)(e) read with S 106, on the permitted costs of credit insurance that can be charged);

• **Default administration charges** (Section101 (1)(f) read with reg 46, on the permitted default administration charges that can be levied; a default administration charge refers to a charge that a credit provider can impose to cover administration costs incurred because of the consumer having defaulted under the credit

agreement: see S1; e.g., this will refer to the costs of a notice of default letter sent to a consumer as per S129(1)(a)); and

• Collection **costs** (S101(1) (g) read with reg 47 on the permitted collection costs that can be charged). Collection costs refer to the amounts, i.e. legal fees, that a credit provider can charge a defaulting consumer, but not including a default administration charge regarding enforcing the consumer's monetary obligations under the credit agreement: S1.

What the amounts referred to in Section101 (1) (b) (g) entail, therefore, are either self-explanatory or have briefly been explained. A description of the exact amounts that form part of the costs of credit insurance, as contemplated in Section101 (1) (e), however, is still required. To understand precisely what is meant by the term "costs of any credit insurance" one must look at the definition of credit insurance. Section 1 provides that credit insurance means:

[a]n agreement between an insurer, on one hand, and a credit provider or a consumer or both, on the other hand, in terms of which the insurer agrees to pay a benefit upon the occurrence of a specified contingency, primarily for the purpose of satisfying all or part of the consumer's liability to the credit provider under a credit agreement as at the time that the specified contingency occurs, and includes:

(a) a credit life insurance agreement;

(b) an agreement covering loss of or damage to property; or

(c) an agreement covering:

(i) loss or theft of an access card, personal information number, or similar device; or

(ii) any loss or theft of credit consequential to a loss or theft contemplated in subparagraph (i). Because the definition of credit insurance includes a reference to "credit life insurance", one also must establish its meaning.

Section 1 states that credit life insurance includes cover that is payable by the insurer in the event of a consumer's death, disability, terminal illness, unemployment, or other insurable risk that is likely to impair the consumer's ability to earn an income or meet the obligations under a credit agreement. It follows from these two

definitions that only those costs specifically relating to credit insurance, and not costs relating to insurance in general, are relevant for the statutory in duplum rule.

The statutory in duplum rule implies that if all the amounts set out in S101(1)(b)(g) combined have accrued to an amount exceeding the outstanding principal debt, the defaulting consumer must first start making payments on his account, after which these types of amounts might once again accrue to an amount not exceeding the outstanding principal debt. The statutory in duplum rule, as provided for in S103 (5) of the NCA, does not protect juristic persons (for the definition of which, see S1), but effectively protects only natural persons, that is, individual consumers of credit (S 6(d)). Further, it applies only to those credit agreements that fall within the ambit of the Act (S4–6 and 8). Thus, the common law rule will continue to apply to all the other agreements (i.e., contracts regarding which capital sum is due by a debtor to the creditor and on which amount a specific rate of interest is payable) falling outside the scope of the Act (S 8(2)). For instance, a loan between a stokvel and its members would still be governed by the common-law in duplum rule (S 8(2) (c)). As will be explained shortly, the statutory rule, however, does apply with slight changes where the credit agreement involved is an instalment agreement, a mortgage agreement, a secured loan, or a lease of movable property.

A practical problem could arise where the credit agreement involved is, for example, an unsecured credit agreement (e.g., a credit facility such as an overdraft facility on a current account), as the credit provider, in such a situation, cannot charge the consumer for the costs of the credit insurance (if applicable). This includes the insurance premiums that are payable, and the credit provider could then run the risk that the insurance might lapse. If the credit provider, however, does not want that consumer's credit insurance to lapse, it must ensure that, for the time being, the premiums and the other costs of credit insurance are paid by itself until the combined costs set out in S101(1)(b) to (g) no longer exceed the outstanding principal amount. There is no statutory duty on a credit provider to pay these premiums on behalf of the consumer during that period. From a financial point of view, however, it might be worth its while to prevent the credit insurance from lapsing, especially if there is a possibility that a claim could be made under the insurance policy later. This, however, will be a problem only in the case of unsecured credit agreements (such as normal credit facilities), as a different rule applies to cases where the credit

agreement involved is an instalment agreement, a mortgage agreement, a secured loan, or a lease of movable property.

5.3 The Application of the Statutory Rule to Specific Types of Credit Agreements

The position set out above will be slightly different when the credit agreement involved is:

• an instalment agreement, i.e., a sale of movable property where the consumer makes periodic payments and receives possession of the property, and ownership of the property either passes to the consumer only if the property is fully paid for or passes subject to the credit provider who retains the right to repossess the property if the consumer defaults (S 1);

• a mortgage agreement, i.e., a loan where the security is in the form of a mortgage over immovable property (S1);

• a secured loan, i.e., a loan – but not including an instalment agreement – where security takes the form of a notarial bond or pledge over movable property (S1); or

• a lease over movable property. Section 102 provides that if the credit agreement is one of these four types of agreements, the credit provider could include it in the principal debt deferred under the agreement of any of the following items to the extent that they are applicable regarding any goods that are the subject of the agreement (on the requirements with which a credit provider should comply to include these amounts in the principal debt, see S102 (2)–(3) and reg 48):

- an initiation fee (as contemplated in S 101(1)(b)), if the consumer was offered and declined the option of paying that fee separately;
- the cost of an extended warranty agreement;
- delivery, installation, and initial fuelling charges;
- connection fees, levies, or charges;
- taxes, licence or registration fees; or
- the premiums of any credit insurance payable as per that agreement (subject to S106).

When the statutory in duplum rule, therefore, must be applied in a case where the credit agreement involved is an instalment agreement, a mortgage agreement, a secured loan, or a lease of movable property, the problem of the costs of the credit insurance (including the insurance premiums) ceasing to accumulate will not be as acute as with the other credit agreements (such as an unsecured credit facility). When the application of the statutory rule involves one of these four types of credit agreement, the credit insurance premiums do not cease to accumulate as part of the S101(1)(b)–(g) costs, as they will be deemed to form part of the principal debt (S102(1)(f)). So, even if the combined cost of the S101 (1)(b)–(g) items equals the outstanding principal debt at the time of the default, the credit insurance premiums will be excluded from the calculation of costs equalling the principal debt.

In any one of these instances, then, the credit provider will not have to worry about also including the credit insurance premiums in the combined costs for S101(1)(b)–(g). The costs will cease to run if they exceed the outstanding principal debt at the time of the default of the consumer, as the premiums are deemed to form part of the outstanding principal amount. In a nutshell, where the credit agreement involved is an instalment agreement, a mortgage agreement, a secured loan, or a lease of movable property, the statutory in duplum rule will be applied as follows:

- the combined amounts set out in S101(1)(b)–(g), namely initiation fees (only if the consumer decided that such a fee should be paid separately and that it should not form part of the principal debt (see also S102(1)(a));
- service fees;
- interest (contractual and default);
- costs of any credit insurance (excluding the credit insurance premiums payable as they form part of the principal debt: See also S102(1)(f));
- default administration charges; and
- collection costs will cease to run when they reach the outstanding balance of the consumer's principal debt at the time of the default.

5.4 Waiver of the Benefits of the Statutory Rule

A controversial issue regarding the common law in duplum rule is whether the consumer of money could waive the benefits of the rule either expressly or tacitly (for

a full discussion of this topic, see Schulze (1999), 11 SA Merc LJ 109, and the authorities discussed and referred to there). Given that the common law in duplum rule is based on public policy and aims to assist consumers in financial difficulties, consumers generally cannot waive the benefits of the rule (See “Loan” by DJ Joubert (revised by JJ Henning) in: WA Joubert (ed) The Law of South Africa First Reissue Vol 15 (1999) in par 281; Schulze (2006) 14 Juta’s Business Law 20 at 20; and Standard Bank v Oneanate Investments supra at 828B-E and the authorities cited there).

Over the last decade, the Supreme Court of Appeal has in three judgments considered the circumstances under which a consumer would be allowed to waive the protection afforded by the rule (Standard Bank v Oneanate Investments supra; F & I Advisors v Eerste Nasionale Bank supra; ABSA Bank v Leech supra). It is trite that parties are not permitted to waive the protection provided by the rule in advance, that is, before or at the time of the conclusion of the credit agreement (for a contrary view that it could be waived in advance, see Lubbe op cit at 200-1). In F & I Advisors v Eerste Nasionale Bank the Supreme Court of Appeal, however, correctly observed that although the rule could not be waived beforehand, it could subsequently be waived by the consumer, for example, to avoid litigation (see at 525F-G in n 1). Schulze pointed out ((2006) 18 SA Merc LJ 486 at 488) that when one deals with the issue of waiver, one should distinguish between, on the one hand, exceptions to the in duplum rule (in Verulam Medicentre v Ethekweni supra both the court a quo and the Supreme Court of Appeal considered whether there were any exceptions to the rule: for a discussion of these two decisions and a view that there are in fact exceptions to the rule, see Schulze (2006) 18 SA Merc LJ 486 and (2006) 14 Juta’s Business Law 20)) and, on the other hand, a waiver of the benefits of the rule.

Apparently, when dealing with the possible waiver of the rule, one must also further distinguish between a waiver in advance and a waiver after the fact. Schulze stated that parties are permitted to waive the benefits of the common-law rule after the fact, that is, after the debt has been called up, provided that all the requirements for a novation (i.e., the substitution of an existing obligation by a new obligation) were met (for arguments and authorities supporting his view, see Schulze (1999) 11 SA Merc LJ 109 at 114-7; and Schulze (2006) 14 Juta’s Business Law 20 at 20–1 and 23).

The statutory in duplum rule, like its common law counterpart, is also based on public policy and aims to assist consumers in financial difficulties. To avoid the possibility of having the same uncertainty existing regarding the possible waiver of the statutory rule, the issue was dealt with expressly. Section 103(5) of the NCA provides that “despite any provision of the common law or a credit agreement to the contrary”, the total of all amounts contemplated in S101 (1) (b)(g) that accrue during the time that a consumer is in default, cannot exceed the unpaid balance of the principal debt. From the wording of S103 (5), it will be impossible for a consumer to waive the benefit of the protection of the statutory in duplum rule, whether at the conclusion of the credit agreement, or at any subsequent stage (Schulze, 2006; 18 SA Merc LJ 486 at 496).

The following example is used to practically and very simply explain the different applications of the common-law and statutory in duplum rules. A consumer (debtor) borrows R50 000 (capital or principal debt amount) from his bank. He manages to repay R10 000 of this sum but then starts to default on his monthly instalments. The interest and other costs of credit due on the outstanding capital amount of R40 000 continues to accrue each month. Eventually the consumer ends up owing arrear interest amounting to R50 000 (contractual and default interest) and other costs of credit (such as initiation fees, service fees, costs of credit insurance, default administration fees, and collection costs) amounting to R10 000. If the common-law rule were to apply, the maximum amount that the creditor could recover would be the unpaid capital amount of R40 000 (R50 000 less R10 000 (capital already paid) equals R40 000) together with the non-interest related costs of credit amounting to R10 000 plus a maximum amount of arrear interest of R40 000 for the outstanding interest (the amount of interest equal to the outstanding capital amount). So in total the creditor may claim R90 000, made up of R40 000 (capital still outstanding) plus interest of R40 000 plus R10 000 for other non-interest related costs of credit. The other R10 000 due for arrear interest still owed the credit provider may not claim. While the unpaid interest still equals the outstanding capital amount, the creditor can also not add any further interest. However, should the consumer then start paying off the arrear interest amount of R40 000, the credit provider may again add further interest to the point where it once again equals the outstanding capital amount (ie, R40 000). In reality the common law works against the consumer who cannot afford

to settle his arrear interest immediately or in one or two payments. The smaller payments that he can afford to make only succeed in setting off the interest again, which means that he can never really manage to pay off the arrear interest. The net effect of this undesirable situation is that the debtor becomes caught in a debt trap from which it is very difficult to escape. This is especially true for the debtor with no equitable assets; here the creditor, aware that legal action is unlikely to produce a positive result, may well decide that receiving little amounts are preferable to receiving nothing at all and is thus the better long-term option. However, if the creditor does eventually decide to take legal action and issues a summons, the common-law rule is suspended and further interest may once again accrue on the outstanding capital amount. The outcome is that by the time judgment is granted against the debtor, the arrear interest might have escalated well beyond the outstanding capital amount.

The statutory in duplum rule operates in a different way and if the common-law rule were to apply to the given set of facts, the maximum amount that the credit provider could recover would be the unpaid capital amount of R40 000 (R50 000 less R10 000 (capital or principal debt already paid) equals R40 000) together with a maximum amount for any of the arrear interest and other costs of credit of R40 000 (an amount equal to the outstanding capital amount). So in total the creditor may claim R80 000 (R40 000 (principal debt outstanding) plus maximum amount for arrear interest and other non-interest related costs of credit of R40 000). The other arrear amounts owed for the interest and other costs of credit (initiation fees, service fees, costs of credit insurance, default administration charges, and collection costs) amounting to R20 000 (R10 000 shortfall on the arrear interest and R10 000 for the arrears on the other costs of credit) the credit provider may not claim. While the unpaid interest and other costs of credit still equal the outstanding principal debt amount, the creditor cannot add any further interest or other costs of credit. However, should the consumer then start paying off the arrear interest and other costs of credit amounting to R40 000, the credit provider may not add any further interest or other costs of credit so that they again equal the outstanding principal debt amount (R40 000) for as long as the consumer is still in arrears. Only once the arrear interest and other costs of credit are repaid, may further interest and other costs of credit accrue again. It is clear that the statutory rule places a type of

moratorium on the accrual of further interest (contractual and default) and other costs of credit on the outstanding principal debt for as long as the consumer is in default. In terms of the statutory rule, a consumer, providing the credit provider does not institute legal action against him of course, actually has a real opportunity to pay off the arrear interest and other costs of credit and not to remain in a debt trap forever. Even if the credit provider does decide to take legal action against a consumer and a summons is issued, the statutory rule is not suspended in such an instance and no further interest and other costs may accrue further on the outstanding capital amount. Therefore, the arrear interest and other costs of credit will when judgment is granted never be able to exceed the outstanding principal amount. The statutory rule does not only place a moratorium on the further escalation of interest and other costs of credit once they reach the outstanding principal debt amount, and for as long as the consumer is in default, but also caps the amount a judgment may be granted for. The statutory rule also finds quicker application than the common-law rule in the same scenario. This is because the unpaid and accrued statutory costs of credit (interest and non-interest related costs of credit) in terms of the statutory rule will more quickly equal the outstanding principal debt than mere unpaid and accrued interest in terms of the common-law rule. Taking the example given above and working on the assumption that the arrear interest amounts to R20 000 and the other costs of credit amount to R20 000, the common-law rule will not apply; the reason being that the arrear interest has not yet reached an amount equal to the outstanding capital amount of R40 000. Conversely, the statutory rule will already apply since the arrear interest plus all the other costs of credit together (R20 000 for interest and R20 000 for other costs of credit) are equivalent to the outstanding capital or principal debt amount of R40 000. The calculations needed to determine whether or not the common-law or statutory rule applies in a given situation are complicated. An expert will most likely be required to assist a consumer, and even a court, to determine whether the unpaid interest, especially where it has been capitalised, and the other costs of credit equals the outstanding principal debt or capital outstanding. These costs will be burdensome for a consumer who is already cash-strapped and of limited financial means.118 Without a doubt, the statutory in duplum rule offers a much better form of debt relief for an over-indebted consumer who has insufficient financial resources, is willing to repay his arrears, but who just needs some type of relief or temporary moratorium on the

further accumulation of interest and other costs of credit to be able to be in a situation where he can properly service his account again.

5.5 Conclusion

From this exposition it is apparent that the vital difference between the common law and the statutory in duplum rules lies in the fact that under the common law rule it is only the interest (contractual and default) that ceases to run if it equals the outstanding capital amount. By contrast, under the statutory rule, all the amounts such as the initiation fees, service fees, interest (contractual and default), costs of any credit insurance, default administration charges, and collection costs cease to run if they combine to exceed the outstanding principal debt. The statutory in duplum rule, therefore, offers better consumer protection than its common law counterpart.

The statutory rule, however, has worsened the position of credit providers. It has long been argued that the common law rule is fundamentally inequitable towards the credit provider and attempts to limit its application should be welcomed (FR Malan & JT Pretorius "Enrichment in Triangular Situations, Interest and the in duplum Rule, and Personal Liability and Company Names", 1996); 8 SA Merc LJ 399 at 405). Vessio also pointed out that the criticism of the common law rule is "arbitrary and inappropriate" towards credit providers (Vessio op cit at 36). The South African Law Reform Commission already recommended its repeal in 1974. A committee was later appointed to investigate existing credit legislation with a view to amendment. This committee too recommended that the common-law in duplum rule should be abolished (Otto op cit at 478-9). The subsequently appointed drafting team of the NCA, however, did not give any attention to these arguments and recommendations when they drafted the statutory in duplum rule. In the National Credit Bill of 2005 (in the final draft version of 27 Nov 2004) cl 103(5) (as it was then) provided as follows:

Despite any provision of the common law or a credit agreement to the contrary, the interest that accrues during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the settlement value under that credit agreement at the time that the default occurs.

This draft version of the in duplum rule was in line with the current common law rule, in that it too provided only for arrear interest to be considered for the rule. In the end,

this clause, however, was drastically amended and the rule expanded to relate not only to arrear interest, but to all the prescribed costs of credit set out in S 101(1) (b)–(g). As the rule has now been codified, its continued existence has been guaranteed. From June 2007, credit providers should be vigilant of consumers not servicing their debts, and should timeously take the appropriate legal action (as per Chapter 6 of the Act) against such consumers to avoid a situation where the statutory in duplum rule comes into play. The next chapter presents conclusions and recommendations.

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter presents conclusions and recommendations. The chapter attempts to present results in line with the objectives as stated in chapter one. The chapter covers the in duplum rule, the creditor protection, the extended protection of juristic persons and education on the existence of the rule.

6.2 Duplum rule

The in duplum rule aims to ensure that debtors are not left in a dire position where they lose all their assets and become forever indebted to creditors. While the rule was codified in South Africa, the question remains whether the move away from the common law in duplum rule was met with success. In South Africa, the common law in duplum rule was codified by Section 103 (5) of the NCA (S 34 of 2005).

The legal regulation of consumer credit was developed for two distinct purposes: first, to affect the economy of the community, and second, to protect the consumer (Maleson, 1959; ALR 298). In South Africa, the statutory in duplum rule as embedded in the NCA aims to create a responsible credit market (Section 3 NCA), correct imbalances in negotiating power between consumers and credit providers, address and prevent the over-indebtedness of consumers, and provide mechanisms for resolving over-indebtedness (reckless lending).

6.3 Creditor Protection

Debtor protection is of critical in South Africa and other foreign countries, but creditors must also be ensured. No allowance is made for the depreciation of the capital plus the interest amount pending judgement, and once legal proceedings are instituted against a debtor, inflation eats into the value of the amount the lender might recover day-by-day (Paulsen and Another v Slipknot Investments 777 (Pty) Ltd 2015 (3) SA 479 (CC).

It is noteworthy that the in duplum rule in modern day commerce only serves to allow dishonest debtors to escape their obligations rather than serves to alleviate their plight (Sanlam Life Insurance Ltd v South African Breweries Ltd 2000 (2) SA 647 (W)), as most debtors seem to take advantage of the situation and not repay their

debts timeously. Further, the court in Paulsen seems to have taken pity on the debtor without considering the creditor who, after having been kept out of his money, still stands to endure the delay of the court process and influence of economic instability on his profitability.

It is wrong to make a lender incur this loss rather than a debtor who has the power to forestall or end litigation by paying the debt. The court in Paulsen thus seemed to assume that all debtors are preyed on by creditors, who are necessarily wealthy. The court was also blind to the fact that not all creditors are financial institutions (Edmunson, 2015; De Rebus 40). South Africa thus must revise creditor protection where debtors are shielded by the in duplum rule.

Further, it is critical to note that a country's economic climate is highly influential regarding the maintenance of a healthy credit market. The in duplum rule could have far-reaching effects on debtor-creditor relations in hyperinflationary times. The creditor's reasonable expectation of profit and the recovery of his expenses is thus worthy of protection (Otto and Grové the Usury Act and Related Matters 59). The court in Paulsen should have ensured that the creditor was protected (Paulsen and another v Slip Knot investments 777 (Pty) Ltd 2014 (4) SA 253 (SCA) 509).

6.4 Simplicity

Consumer credit legislation is complicated, extremely technical in nature, and difficult to apply in practice (Grové and Otto Basic Principles of Consumer Credit Law 2). Given these inherent technicalities and complications, legislatures must ensure that they curb rather than confound the confusion that surrounds credit legislation. In South Africa, the legislature failed to make the statutory in duplum rule understandable and easy to apply (Nedbank v National Credit Regulator (662/2009 & 500/210) [2011] ZASCA 35 (28 March 2011)), and instead, complicated it by adding the costs of credit (S 101 (1) (b)–(g)) to the interest so that a need to calculate and determine which amounts would be considered in the double arose.

Despite that this provision comes from a public policy point of view and aims to protected debtors, it has complicated the calculations, resulting in the need for expert evidence for the calculation thereof. It questions where exactly the list of the costs of credit ends, as third party-costs such as the costs of debt collection are part and

parcel of the credit costs (Campbell, 2010; SA Merc LJ 10). Further, the inclusion of other amounts, apart from the interest itself, could dramatically affect the profit element of risk takers (credit lenders) and could in the long term curb investment in the lending market (Vessio The Effects of the in duplum Rule 116). As such, the legislature should offer clarity as to the circumstances in which the related costs of credit, despite not being within the ambit of the list provided in the Act (NCA 34 of 2005), will be included in the sum of the repayable debt. The education of legal professionals on the subject should also be considered so that there would be no need to employ an expert in such calculations. Further, the calculations should be simplified to ensure that the debtor understands how the sum is calculated and does not end up feeling oppressed by the system and so that the creditor does not feel short-changed.

6.5 The Extended Protection of Juristic Persons

The application of the statutory in duplum rule to non-juristic consumers in South Africa is a call for concern among those who wish to promote business growth, as some juristic persons could also require protection by the statutory in duplum rule despite the continued application of the common law in duplum rule to agreements to which the NCA does not apply. The determined application of the statutory in duplum rule is thus an efficient move by both the South African legislatures, as some entities do not require as much protection as others, and the extension of protection towards them would render an equality that goes against debtor protection.

6.6 Education on the Existence of the Rule

The dissemination of information on the existence of the rule is a positive aspect of the implementation of the rule by the legislatures, with South Africa taking a further step in ensuring an efficient credit market by setting up a credit bureau aimed at reducing the number of defaults. South African legislature, however, remain indebted to society to increase awareness of the operation of the rule. In so doing, caution should be taken such that debtors do not become encouraged to delay debt repayment relying on the application of the rule, as the rule in modern commerce serves as an opportunity for debtors to escape their obligations rather than to

alleviate their plight (Sanlam Life Insurance Ltd v South African Breweries Ltd 2000 (2) SA 647 (W) 647).

6.7 Noteworthy Recommendations for South Africa

Despite deserving applause for enacting the statutory in duplum rule, the legislature in South Africa should consider offering clarity as to whether third-party costs of credit should be included in the stipulated costs of credit. Clarity should also be given to the considerations when deciding whether a cost forms part of the outlined costs (Section 101(b)–(g)) or not. The exclusion of juristic persons who are consumers of creditors also demands reconsideration because not all juristic debtors are stable enough not to desire public policy protection, for they are the country's future stable debtors. The overarching protection of debtors offered in the Paulsen case also needs revision, as some debtors take advantage of circumstances and leave debts unpaid despite them being reminded of the need to repay. The legislature carefully considered the framing of the statutory rule, and its intentions were good but it could instead have engaged in legislative overkill.

The South African judiciary and legislature must educate the populace of the existence of the rule, as most transactions will not come to court, leaving most debtors still over-indebted. Consideration should be given to the existence of informal credit providers, and most debtors in such transactions will attempt to keep repayment out of the court.

6.8 Summary

The in duplum rule was effectively codified in as far as debtor protection is concerned, despite some complications in the application of the rule. For South Africa, it is highly unlikely that the rule will be amended unless major role players show that they experience serious system challenges in applying the rule (Otto, 2012).

The need to protect debtors and balance access to credit with the specific protection of vulnerable consumers should continue to be reflected in the credit regulations in South Africa. Complications will always be evident in consumer credit legislation, for it is centred on the accommodation of divergent and conflicting interests. It, however,

should not result in a hesitation to protect consumers in cases of their proven or potential exploitation (Otto and Grové the Usury Act and Related Matter 59). The extension of reckless credit must be discouraged, and the duty of creditors must come together and ensure that the blacklisting of defaulters is conducted efficiently.

REFERENCES

Literature

Books

Krippendorff, K. (2004). Content analysis: An introduction to its methodology: Sage.

White, M. D., & Marsh, E. E. (2006). Content analysis: A flexible methodology. Library trends, 55(1), 22-45.

Braun, V. & Clarke, V. (2006) Using thematic analysis in psychology. Qualitative Research in Psychology, 3(2), pp. 77-101.

Burns, N. & Grove, S. (2004) The Practice of Nursing Research: Conduct, Critique, & Utilization.5th ed. Philadelphia, USA: Saunders.

Chambliss, D. & Schutt, R. (2012) Making Sense of the Social World: Methods of Investigation.4th ed. London: SAGE Publications.

Collins Cobuild Dictionary. 4th ed. (2003) s.v. “timing”.

Collis, J. & Hussey, R. (2003) Business Research – A practical guide to undergraduate and postgraduate students.2nd ed. London: Palgrave: Macmillan.

Curry, L., Nembhard, I. & Bradley, E. (2009) Qualitative and Mixed Methods Provide Unique Contributions to Outcomes Research. Circulation Journal., Volume 119, pp. 1442-1452.

Keele, R. (2011). Nursing Research and Evidence-Based Practice: Ten Steps to Success. 1st ed. Burlington, USA: Jones and Bartlett.

Kolb, B. (2008) Marketing Research: A practical Approach. London: Sage Publications.

Krause, S. (2005) Research Paradigms and Meaning Making: A Primer. The Qualitative Report, 10(4), pp. 758-770.

Lietz, C. & Zayas, L. (2010) Evaluating Qualitative Research for Social Work Practitioners.. Advances in Social Work, 11(2), pp. 188-202.

Streubert-Speziale, H. & Carpenter, D. (2003) Qualitative research in nursing: Advancing the humanistic imperative. 3rd ed. Philadelphia: Lippincott Williams and Wilkins.

Wiid, J. & Diggines, C. (2010) Marketing Research. Cape Town: Juta Academic

Babbie, E. & Mouton, J. (2009) The practice of social science. 9th ed. South Africa: Oxford University Press

Gray, D. (2013) Doing Research in the Real World. 3rd ed. London: Sage Publications .

Journal articles

Campbell 2010 SA Merc LJ

Campbell J " In Duplum: Relief for Consumers of Excessively Priced Small Credit Legitimized by the National Credit Act 2010" SA Mercantile Law Journal 1-11

Christie the Law of Contract

Christie RH The Law of Contract 7th Edition (Lexis Nexis Butterworth 2016)

De Villiers 2010 P ER

De Villiers DW "National Credit Regulator v Nedbank Ltd and the practice of Debt Counselling in South Africa" 2010 PER 128-162

Edmunson 2015 De Rebus

Edmunson K Interested about the interest in debt? The in duplum rule revisited 2015 De Rebus 38-40

Fratzcher, Konig and Lambert 2016 Journal of International Money and Finance

Fratzcher M, Konig PJ and Lambert C "Credit provision and banking stability after the great financial crisis: the role of bank regulation and the quality of governance" 2016 Journa l of International Money and Finance 113-135

Grové and Otto Basic Principles of Consumer Credit Law

Grové NJ and Otto JM Basic Principles of Consumer Credit Law 2nd ed (Juta Cape Town 2002)

Otto and Grové The Usury Act and Related Matters

Otto JM and Grové NJ The Usury Act and Related Matters South African Law Commission Working Paper 46 Project 67 New Credit Legislation for South Africa (The Commission 1993)

Honiball and Nortje 2014 Without Prejudice

Honiball M and Nortje L "Does the in duplum Rule Limit Interest Payable on a

Tax Debt?" 2014 Without Prejudice 6-7

Hood 2013 Juridical Law Review

Hood P "Claytons Case and Connected Matters" 2013

Juridical Law Review 501 539

Kelly-Louw 2011 SA Merc LJ

Kelly-Louw M "The Statutory induplum rule as an Indirect Debt Relief

Mechanism" 2011 SA Merc LJ 352-375

Khaseke 2008-2010 Kenya Law Review

Khaseke GM "Introduction of The in duplum Rule in Kenya: A Legal Mechanism of Equitable Distribution of Resources or a Poverty Redistributive Initiative?" 2008-2010 Kenya Law Review 1-15

Maleson 1959 ALR

Maleson AI "Consumer Credit Regulation" 1959 Albany Law Review 297-314

Otto 2010 Fundamina

Otto J "The History of Consumer Credit Legislation in South Africa" 2010 Fundamina 257-273

Otto 2012 Journal of Contemporary Roman - Dutch Law

Otto J "The National Credit Act: Default Notices and Debt Review; the ultra duplum rule: Nedbank Ltd v National Credit Regulator 2011 3SA 581 (SCA)" available at SSRN:http://ssrn.com/abstract=2126542 2012 Journal of Contemporary Roman - Dutch Law 127-139

Otto and Otto The National Credit Act Explained

Otto JM and Otto RL The National Credit Act Explained 3rd Edition (Lexis-Nexis Butterworth 2013)

Schulze 2006 SA Merc LJ

Schulze WG " The in duplum rule: A Short List of Some Unresolved Issues" 2006 SA Mercantile Law Journal 418-429

Swartz 2012 African Journal of Business Management

Swartz N "The Prevention of over Indebtedness and Credit Regulation an Islamic Response" 2012 African Journal of Business Management 10099-10108

The Bible (RSV)

Multiple Authors The Holy Bible Revised Standard Version

Vessio 2010 Obiter

Vessio M "A Short Discussion on the Effects of the in duplum Rule Upon Commencement of Litigation and After Judgement: A View Both 'Inside' and 'Outside' The National Credit Act: Notes" 2010 Obiter 725-734

Vessio The effects of the in duplum Rule

Vessio M "The effects of the in duplum Rule and Clause 103(5) of the National credit bill 2005 on Interest " (LLM Dissertation University of Pretoria 2006)

Mulder Reckless credit under the National Credit act

Mulder I "Reckless credit under the National Credit Act: A comparative analyisis" (LLM Dissertation University of South Africa 2015)

Ndegwa The in Duplum rule in Kenya

Ndegwa CK “in Duplum rule in Kenya: Critical analysis of the unaddressed aspect of section 44A of the Banking Act” (LLB Dissertation Strathmore university Law school 2016)

Madzokere Codification of the in duplum rule

Madzokere TD “The codification of the in duplum rule in Shouth Africa and Zimbabwe” (LLM Mini-Dissertation North west university 2018)

Statutes

National Credit Act 34 of 2005 (South Africa)

Prescribed Rate of Interest Act 55 of 1975 (South Africa)

Credit Agreements Act 75 of 1980 (South Africa)

Prescription Act 68 of 1968 (South Africa)

Usury Act 73 of 1968. (South Africa)

Usury Act Exemption Notice

General Law Amendment Act 8 of 1879

General Law Amendment Ordinance 5 of 1902

Limitation and Disclosure of Finance Charges Amendment Act 90 of 1980

Bank Act 94 of 1990

Credit Consumer Bill of August 2004

Cases

Absa Bank Ltd v Leech and Others (442/98) [2001] ZASCA 65 [2001] All SA 55(A) (23 May 2001)

African Dawn Property Finance (Pty) Ltd v Dreams Travel and Tours CC and Others (2011 (3) SA 511 (SCA); [2011] 3 All SA 345 (SCA) [2011] ZASCA 45; 234/10 (30 March 2011)

Bindura Nickel Corporation Ltd v The Zimbabwe Revenue Authority HH 30-08 HC 1033/06

Central African Building Society v Zim slate Quartzite (Pvt) Limited and Armin co Investments (Pvt) Limited and Tinashe Able Chimanikire and Beaver Pamhidzai Chimanikire and Mohamed Iqbal Mohamed HH 49-16 HC 9692/13

Commercial Bank of Zimbabwe v MM Builders and Suppliers (Pvt) Ltd and Others and Three Similar Cases 1997 (2) SA 285 (ZH)

Commissioner for South African Revenue Service v Woulidge 2002 (1) SA 68 (SCA)

Conforce (Pvt) Ltd v City of Harare 2000 (1) ZLR 455 (H)

Da Silva v Slip Knot Investments (661/2009) [2010] ZASCA 174 (2 December 2010)

Devaynes v Noble (1816) 1 MER.572; 35 E.R 781

Margo v Gardner (564/09) [2010] ZASCA 110 (17 September 2010)

Micro Plan Financial Services (Pvt) Ltd v Chesets Trading (Pvt) Ltd and Charity Madyara and John Maxwell Chishakwe and Portia Nyamutsamba HH513-15 HC 3182/15

Nedbank v National Credit Regulator (662/2009 & 500/210) [2011] ZASCA 35 (28 March 2011)

Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd 2015 (3) SA 479 (CC)

Sanlam Life Insurance Ltd v South African Breweries Ltd 2000 (2) SA 647 (W)

Standard Bank of South Africa Ltd v Oneanate Investments Pty Ltd (In Liquidation) 1998 (1) SA 811 SCA

Verulam Medicentre (Pty) Ltd v Ethekwini Municipality 2005 (2) SA 451 (D)

Volkskas Bpk v Meyer 1966 (2) SA 379 (T)

Reports and Government Gazettes

Credit Law Review August 2003, Summary of Findings of the Technical Committee, The Department of Trade and Industry.

Government Gazette vol 470 no 26678, Cape Town 17 August 2004

Government Gazette GN R489 no 28864, Cape Town 31 May 2006.

Internet source

Anon date unknown https://www.google.co.za/?gws_rd=ssl#q=what+is+credit

Anonymous date unknown "What is Credit" https://www.google.co.za/?gws_rd=ssl#q=what+is+credit, Accessed June 2019

Anon 2016 www.israelfreeloan.org.il/en/about-ifla/what-is-ifla/

Anonymous 2016 What is Israel free loan policy www.israelfreeloan.org.il/en/about-ifla/what-is-ifla/, Accessed August 2019

Anon 2016 https://www.heyns.co.za/press-room/standard-acknowledgements-of-debtand-the-national-credit-act-nca/?id=98

Anonymous 2016 Standard Acknowledgements of Debt and the National Credit Act (NCA) https://www.heyns.co.za/press-room/standard-acknowledgements-ofdebt-and-the-national-credit-act-nca/?id=98, Accessed March 2019

Anon date unknown www.investopedia.com/terms/i/inflation.asp

Anonymous date unknown inflation www.investopedia.com/terms/i/inflation.asp, Accessed March 2019

Anon date unknown www.tradingeconomics.com/zimbabwe/inflation-cpi

Anonymous date unknown Zimbabwe inflation rate www.tradingeconomics.com/zimbabwe/inflation-cpi, Accessed March 2019

Anon date unknown www.tradingeconomics.com/south-africa/inflation-cpi

Anonymous Date unknown South Africa inflation rate www.tradingeconomics.com/south-africa/inflation-cpi, Accessed March 2019

Anon 2014 http://www.marisit.co.za/wp-content/uploads/2019/11/impact-of-thenational-credit-act.pdf

Anonymous 2014 Impact of the new credit act on debt recovery and credit

bureau industries http://www.marisit.co.za/wp-content/uploads/2014/11/impactof-the-national-credit-act.pdf, Accessed September 2019

Bhebhe 2019 www.theafricareport.com/southern-africa/zimbabwe-sets-up-creditbureau-as-banks-reel-from-defaults.html

Bhebhe N Zimbabwe set sup credit bureauas bank sreel from defaults www.theafricareport.com/southern-africa/zimbabwe-sets-up-credit-bureau-asbanks-reel-from-defaults.html, Accessed October 2019

DTI 2014 . . . .

2004http://www.ncr.org.za/documents/pages/background_documents/Credit%20Law %20Re view.pdf

Department of Trade and Industry 2004 Making credit markets work a policy framework for consumer credit http://www.ncr.org.za/documents/pages/background_documents/Credit%20La w %20Review.pdf, Accessed November 2019

Elliot 2013 www.sablog.kpmg.co.za/2013/09/understanding-the-application-of-the-induplum-rule/

Elliot F KPMG understanding the in duplum Rule 2013 https://www.sablog.kpmg.co.za/2013/09/understanding-the-application-of-thein-duplum-rule/ accessed, August 2019.

Kawonde 2003 www.theindependent.co.zw/2003/05/30/in-duplum-rule-and-inflation/

Kawonde. P In duplum rule and inflation 2003 www.theindependent.co.zw/2003/05/30/in-duplum-rule-and-inflation, Accessed August 2019

Kaduwo 2017 https://www.theindependent.co.zw/2017/03/17/economy-risk-highinflation

Kaduwo T Economy at high risk of high inflation https://www.theindependant.co.zw/2017/03/17/economy-risk-high-inflation/ Accessed March 2019

Nyahuma 2015 www.sundaymail.co.zw/legal-matters-getting-your-head-around-induplum-rule/ Nyahuma T 2015

LEGAL MATTERS: Getting y our head around in duplum Rule www.sundaymail.co.zw/legal-matters-getting-your-head-around-in-duplum-rule/ Accessed March 2019

Griffith-Jones with Karwowski and Dafe 2014 https://www.diegdi.de/uploads/media/ODI_Report.pdf

Griffith-Jones S with Karwowski E and Dafe F 2014 ODI Report A financial sector to support development in low in com ecountries https://www.diegdi.de/uploads/media/ODI_Report.pdf Accessed May 2019

Ramdhin and Nicol 2015 www.werksmans.com/legal-briefs-view/constitutional-courtruling-means-a-sea-change-for-banks-and-other-lenders/

Ramdhin A and Nicol B 2015 Constitutional Court Ruling a Sea Change f or Banks and other Lenders www.werksmans.com/legal-briefs-view/constitutional-courtruling-means-a-sea-change-for-banks-and-other-lenders/ Accessed July 2019

Growth of the internet. 2006. [Online]. Available http://www.ncr.org.za/publications/Pricing%20and%20Access%20Summary%20Cover%20Ju ne%202009.pdf, (accessed on 5 July 2019) at 20].

Growth of the internet. 2006. [Online]. Available http://www.dti.gov.za/ccrd/YouhavetheRighttoCreditOptions.htm) (accessed 7 July 2019).

Growth of the internet. 2006. [Online]. Available http://www.ncr.org.za/publications/Pricing%20and%20Access%20Summary%20Cover%20Ju ne%202009.pdf (accessed on 8 July 2019)].

Family,Health,International,(2012).http://www.ccs.neu.edu/course/is4800sp12/resources/qualmethods.pdf

Family Health International (2012) Qualitative Research Methods: A Data Collector's Field Guide. http://www.ccs.neu.edu/course/is4800sp12/resources/qualmethods.pdf [Accessed 2 December 2019].

Harvard (2008)
http://isites.harvard.edu/icb/icb.do?keyword=qualitative&pageid=icb.page340897

Harvard (2008) Foundations of Qualitative Research in Education: Thematic Analysis.[Online] Available at: http://isites.harvard.edu/icb/icb.do?keyword=qualitative&pageid=icb.page340897[Accessed 21 December 2019].

Slaughter and May (2015) http://www.slaughterandmay.com/media/251437/an-introduction-to-english-insolvency-law.pdf

Slaughter and May (2015) *An introduction to English Insolvency Law.* [Online] Available at: http://www.slaughterandmay.com/media/251437/an-introduction-to-english-insolvency-law.pdf [Accessed 30 January 2016].

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Mr Benedict Sbongiseni Ndlovu (216074443)
Grad School Of Bus &Leadership
Westville

Dear Mr Benedict Sbongiseni Ndlovu,

Protocol reference number: 00002085
Project title: In duplum rule and reckless lending under National Credit Act: Its impact on credit agreement.

Exemption from Ethics Review

In response to your application received on 10 September 2019, your school has indicated that the protocol has been granted **EXEMPTION FROM ETHICS REVIEW.**

Any alteration/s to the exempted research protocol, e.g., Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through an amendment/modification prior to its implementation. The original exemption number must be cited.

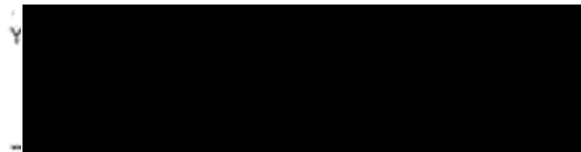
For any changes that could result in potential risk, an ethics application including the proposed amendments must be submitted to the relevant UKZN Research Ethics Committee. The original exemption number must be cited.

In case you have further queries, please quote the above reference number.

PLEASE NOTE:
Research data should be securely stored in the discipline/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Y



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