

TEST YOUR INSTINCTS – THE LAW REPORTS

Over the next few weeks, we will be sketching some scenarios from past court cases and then asking our community to guess the final outcome. This will test your instincts and will also add to your knowledge of the law. Interestingly enough, it will also show that justice and the law are sometimes completely at odds with one another.

Let's get started with a case about the joint ownership of property. Names and places have been changed to protect the innocent, and to prevent you from being able to research the answers!

WHAT'S FAIR IN LOVE AND WAR?

In this case Janet instituted legal proceedings against her former lover John, to force the sale of the former common home and to obtain a ruling regarding how the proceeds of the sale should be divided.

Janet and John had bought this property some years before and it had been registered in their names jointly. They were accordingly joint owners with their names both being listed on the title deed. At the time they were clearly very much in love, but now things were very different.

When they bought the property, John had paid a deposit of R80 000. During the period of their ownership, he had also paid R583 000 towards the bond instalments, R104 000 towards improvements and R47 000 towards rates and taxes. All in all, the total of his additional contributions amounted to just over R815 000-00.

Janet and John had never entered into an agreement to regulate their co-ownership of the property. Now that they had broken up, they were unable to reach an agreement as to who should get what.

Janet was prepared to allow for the cost of improvements and bond instalments to be taken into account to a certain extent, but John wanted all of his contributions to be repaid before profits were divided. Because nothing had been agreed up front, John had to base his claim upon a tacit or implied agreement of partnership.

In her defense, Janet alleged that John's claim for repayment had prescribed because more than 3 years had passed since he had paid most of the money.

To explain, prescription is a process in terms of which a debt is extinguished by the passing of time. Ordinary debts are extinguished after 3 years unless there has been an acknowledgement of indebtedness by the debtor or unless the creditor has instituted legal proceedings to recover the debt within this three-year period.

In response to this defense of prescription, John raised the point that in terms of the law relating to prescription, if the debtor and the creditor are partners, and if the debt arises within the partnership, such a debt will only prescribe after the expiration of the three-year period, plus an additional year which starts to run when the partnership terminates. On this basis the time period for prescription to take effect would not have passed and his claims for repayment would still be valid.

What do you think the court decided? Was there a partnership between Janet and John as regards the ownership of their home, and if not, had John's claim for repayment prescribed?

Let's hear your views.