CONSUMER CREDIT LAW

CCL

LEVEL 4

Reckless Lending and Remedies

CCL Brand Ambassador Study Guide

Reckless lending under the National Credit Act, old debt and prescription, sequestration and liquidation defence, and business rescue. The most technical level.

What this level covers

This is the most technical level in the programme. It covers the places where the law goes on the attack for the consumer, rather than simply defending them.

Levels 2 and 3 were about processes that are happening to a person. Level 4 is about the arguments that can be made **back**. A loan that should never have been granted. A debt so old it can no longer be enforced. An insolvency application being used as a weapon it was never meant to be. These are the matters where a properly prepared case can change everything.

What you will learn

- Reckless lending: the sections of the National Credit Act that matter, the five warning signs, and the four things a court can order.
- What evidence actually proves a reckless lending claim, and why timing matters.
- Old debt and prescription: when a debt becomes too old to enforce, and the mistake that restarts the clock.
- Sequestration and liquidation: why they are not debt-collection tools, and the established grounds to fight back.
- Business rescue, for when the trouble is a company rather than a person.

A WARNING BEFORE YOU START

This level contains real legal detail, including case names. That detail is here so you can recognise a situation and speak about it accurately. It is **not** here so you can assess anybody's case. The more technical the knowledge, the more carefully you must hold the line: explain generally, then hand over to CCL.

You need 85 percent to pass the Level 4 test.

1 What reckless lending actually means

Reckless lending is when a credit provider gave a loan or credit agreement without properly checking whether the person could afford it. Most South Africans have never heard the term. If it applies, the law gives them powerful options.

The duty that was broken

Under the National Credit Act, every credit provider must carry out a reasonable affordability assessment before approving credit. That means looking at income, existing debts, living expenses and dependants. If they did not do it, or did it carelessly, the agreement may be reckless under the law.

The sections that matter

Section	What it does
Section 80	Sets out when a credit agreement is reckless.
Section 81	Requires the credit provider to conduct a proper affordability assessment before granting credit.
Section 92	Requires the cost of credit, the interest and the risks to be explained in language the person understands.
Section 83	Gives the court its remedies where lending is found to be reckless.

THE LEGAL AUTHORITY

Under **Section 80 of the National Credit Act**, a credit agreement is reckless if, at the time it was concluded, the credit provider failed to conduct a reasonable affordability assessment, or the assessment showed the consumer would become over-indebted. The NCA has been law since 2007, and every bank and retailer is bound by it.

Why people never raise it

Because they blame themselves. The person signed the papers, so they assume the debt is entirely their responsibility. The law takes a different view: the professional lender carries a duty too, and if it failed in that duty, that failure has consequences.

THE SHIFT IN THINKING

The question is not only "did this person borrow too much." It is also "should this credit provider ever have granted it." That second question is what reckless lending is about.

2 The five signs, and the four outcomes

Five signs a loan may have been reckless

1. **They never asked about your other debts.** A salary-only check is not a real affordability assessment.
2. **Your income could not cover the new debt** once it was added to what you already owed.
3. **The application was rushed.** Approved in minutes, with no real income or expense check.
4. **The terms were never explained.** Section 92 requires the cost of credit, interest and risks to be explained in language you understand.
5. **You already had defaults, or were under debt review, when they approved you anyway.** This is the most common and clearest sign, because a bureau check would have shown it.

Four things a court can order

Order	What it means for the person
Agreement set aside	The debt falls away.
Obligations suspended	Payments are paused, often without interest running during the pause.
Debt restructured	A new plan based on what the person can actually afford.
Reckless portion removed	Reckless interest, fees or capital are stripped out, so the balance drops.

SCENARIO

A fifth loan on top of four

Refilwe already had four active credit agreements when a lender approved a fifth, without asking about the others and without a proper bureau check. In a matter like this, the loan can be challenged as reckless.

What happens: CCL helps gather the evidence, and where the facts support it, a reckless lending claim is taken forward by independent affiliate attorneys.

Illustrative only. Outcomes depend entirely on the facts, and CCL never guarantees a result.

WHAT YOU SAY

" If a bank gave you a loan you clearly could not afford, without checking properly, the law may be on your side."

" Especially if you already had defaults or were under debt review when they approved you, it is worth getting checked."

" It is called reckless lending, and CCL looks at exactly this."

3 Evidence, timing and the trap

A reckless lending claim is not won by telling a story. It is won by showing what the lender knew, or should have known, at the moment they approved the credit.

What builds the case

- **The application itself,** showing what was asked and what was not.
- **Bank statements from around that time,** showing what the person's actual position was.
- **The credit report from that date,** showing what a bureau check would have revealed.
- **The agreement,** showing the terms and whether they were properly disclosed.

Timing

There is no strict time limit on raising reckless lending, but evidence becomes much harder to find after about three years. Recent agreements are therefore the strongest. This is a practical point, not a legal deadline, and it is a good reason to encourage someone not to wait.

What it can cover

Vehicle finance, personal loans, store accounts and credit cards. It can even reach home loans, although those face a higher bar.

THE TRAP TO WARN PEOPLE ABOUT

A person who believes their loan was reckless must **never simply stop paying** without the right legal step in place. Stopping payment does not raise the claim. It triggers default action, and it can hand the credit provider the very leverage the person was trying to escape.

WHAT YOU SAY

" Do not just stop paying. Get advice first, or you make your own position worse."

" Try to keep the paperwork from when you took the loan, it matters more than you think."

" The sooner it is looked at, the easier the evidence is to find."

4 Prescription: when a debt gets too old

Prescription is the legal rule that a debt can become too old to be enforced. People hear about it in the street, usually in a garbled form, and then act on it and make things worse. Understanding it properly is genuinely useful.

The basic rule

Prescription is governed by the **Prescription Act 68 of 1969**. As a general rule, most ordinary debts prescribe after **three years**. That covers things like personal loans, store accounts, credit cards and cellphone accounts.

The important exceptions

Type of debt	General prescription period
Most ordinary consumer debts	Three years
Debt secured by a mortgage bond	Thirty years
Judgment debts	Thirty years

So a person cannot assume their home loan or a judgment against them will simply age away. Those sit in the thirty-year category.

The mistake that restarts the clock

The clock can be interrupted. If a person **acknowledges the debt**, for example by making a payment on it or admitting it in writing, the period can start running again. This is why collectors sometimes press hard for a small payment on a very old account, and why a person should not pay or sign anything on an old debt before it has been checked.

SCENARIO

The small payment that cost him years

A man is chased about an account from years ago. A caller persuades him to pay a small amount as a gesture of good faith. That payment may amount to acknowledging the debt, which can restart the prescription clock.

What you say: never pay or sign anything on a very old debt before it has been checked. Do not tell him whether it has prescribed, because that is a legal assessment. Get him to CCL.

Illustrative only. Whether a debt has prescribed depends entirely on the facts.

BOTH ERRORS ARE DANGEROUS

Assuming an old debt has prescribed and ignoring letters can end in a judgment. Assuming it has not and paying can restart the clock. **Neither guess is safe.** The only correct advice is to have it checked.

WHAT YOU SAY

- " Some old debts do become too old to enforce, but do not assume yours has."
- " Do not pay anything or sign anything on an old debt before it is checked, because that can restart the clock."
- " Do not ignore court papers either. Get it looked at properly."

5 Sequestration and liquidation

Two words that sound like the end of everything. They are not, and increasingly they are being used as a pressure tactic rather than for their proper purpose.

Two different processes

Process	Who it applies to
Sequestration	A natural person, meaning an individual human being. It declares them insolvent, and a trustee takes control of the estate.
Liquidation, or winding-up	A company or close corporation.

The legal truth creditors hope people do not know

Our courts have been consistent for decades: **these are not debt-collection mechanisms**. Sequestration is not simply an alternative way for one creditor to squeeze payment out of a debtor. Its purpose is to set the insolvency machinery in motion for the benefit of creditors as a whole. For companies, the principle is just as firm.

The four patterns of abuse

- **First resort, not last.** Reaching for insolvency to skip the ordinary summons, judgment and execution route, along with the consumer protections that come with it.
- **Pressure and leverage.** The threat itself, and the stigma, used to force payment of a disputed or inflated amount before anyone tests the claim.
- **Reaching a home inside a company.** Liquidating a property-holding company to get at the house, bypassing the judicial oversight and reserve-price protections that apply to an ordinary home repossession.
- **Pushing on a disputed debt.** Driving the process where the debt is genuinely contested, which is exactly the situation the courts say belongs in an ordinary action.

THE ONE TO SPOT

If someone tells you their **company** is being liquidated and their **home** is held inside that company, that is a serious and urgent pattern. It can sidestep the protections a home would normally have. Get them to CCL the same day.

6 The grounds to fight back

These applications can be opposed, and the law leans in the consumer's favour where the process is being misused. These are the established grounds.

1. **The debt is genuinely disputed.** Where the debt is disputed on bona fide and reasonable grounds, the matter belongs in an ordinary action, not in insolvency proceedings.
2. **No advantage to creditors.** A compulsory sequestration must show a real benefit to the general body of creditors, a meaningful dividend, not just one creditor chasing payment. Where that cannot be shown, the application fails.
3. **Abuse of process.** Where the process is used for a purpose other than its proper one, the courts will not allow it.
4. **The proper remedy lies elsewhere.** Ordinary action and execution carry built-in protections, including judicial oversight and a court-set reserve price for a primary home. Insolvency must not be used to sidestep them.
5. **Procedural defects.** The formal requirements, including a valid Section 345 demand for companies, must be properly met. Defects can be fatal to the application.

VERIFIED SOUTH AFRICAN LAW

The leading authority is the **Badenhorst rule**, from Badenhorst v Northern Construction Enterprises, which holds that winding-up must not be used to enforce a debt whose existence is genuinely disputed on reasonable grounds. The Supreme Court of Appeal confirmed this approach in **Afgri Operations Ltd v Hamba Fleet (Pty) Ltd**. Abuse of process in this context is illustrated in **Ex Parte Snooke**.

The Section 345 demand

A Section 345 demand is a formal step a creditor uses before applying to wind up a company. Ignoring it can have serious consequences, but it can also be answered, including by raising a genuine dispute. It should be reviewed quickly.

SCENARIO

The disputed invoice and the winding-up threat

A small business owner is threatened with liquidation over an invoice he has disputed in writing for months. The creditor is using the threat to force payment.

What happens: where a debt is genuinely disputed on reasonable grounds, the Badenhorst rule may mean the creditor must use an ordinary action rather than winding-up. CCL reviews the papers urgently, and court steps are taken by independent affiliate attorneys.

Illustrative only. It turns on the facts, and CCL never guarantees a result.

WHAT YOU SAY

" A sequestration or liquidation application can be opposed. It is not automatic and it is not the end."

" These are not meant to be debt-collection tools, and the courts have said so for a long time."

" These applications move fast and the dates matter. Send CCL the papers today."

7 Business rescue

This module is about companies, not individuals. If a person tells you their business is in trouble rather than their personal debt, this is the conversation.

What it is

Business rescue is a formal process under the **Companies Act 71 of 2008** for a company in financial distress. The aim is to reorganise the company's affairs so it can keep trading, or, where that is not possible, to achieve a better result for creditors than an immediate liquidation would.

Why it exists

Because closing a struggling company is often the worst outcome for everyone. Jobs go, creditors recover little, and value that could have been saved is destroyed. Business rescue is the law's attempt to give a distressed company a structured chance to recover.

When it comes up for you

- Someone says their **company** is under pressure from creditors.
- Someone mentions liquidation of a business rather than their own debt.
- Someone runs a small business that is struggling and is frightened of losing everything.

THE DISTINCTION TO HOLD

Personal debt, a car, a home, debt review: that is everything you learned in Levels 2 and 3. A **company** in distress is a different conversation, and business rescue is the route to raise. If you are not sure which it is, ask one simple question: is the debt in your own name, or in a company's name?

WHAT YOU SAY

" If it is a company in trouble rather than personal debt, there is a process called business rescue."

" It is designed to help a company keep trading rather than simply be shut down."

" CCL can look at it. Go to creditlaws.co.za and tap Get Help Now."

+ Level 4 glossary

Reckless lending
Credit granted without a proper affordability assessment, or where the assessment showed the person would become over-indebted.

Affordability assessment
The check a credit provider must do before granting credit: income, existing debts, expenses and dependants. Required by Section 81.

Section 80
The NCA section setting out when a credit agreement is reckless.

Section 81
The NCA section requiring the affordability assessment.

Section 92
The NCA section requiring the cost of credit, interest and risks to be explained understandably.

Section 83
The NCA section giving the court its remedies where lending was reckless.

Set aside
A court order cancelling an agreement, so the debt falls away.

Suspended obligations
A court-ordered pause on payments, often without interest running during the pause.

Prescription
When a debt becomes too old to be legally enforced.

Prescription Act 68 of 1969
The Act governing prescription of debts in South Africa.

Interruption of prescription
Where acknowledging a debt, for example by paying on it, can restart the clock.

Sequestration
The court process declaring a natural person insolvent, with a trustee taking control of the estate.

Liquidation or winding-up
The equivalent process for a company or close corporation.

Badenhorst rule
Winding-up must not be used to enforce a debt genuinely disputed on reasonable grounds.

Advantage to creditors
The requirement that a compulsory sequestration show a real benefit to the general body of creditors.

Abuse of process
Using a legal process for a purpose other than its proper one. The courts will not allow it.

Section 345 demand
A formal step a creditor uses before applying to wind up a company.

Business rescue
A Companies Act 71 of 2008 process to reorganise a financially distressed company so it can keep trading, or achieve a better outcome than liquidation.

+ Practice questions

Cover the answers and test yourself. This is the hardest level, so be honest with yourself about what you actually know.

1. Which NCA section says when an agreement is reckless, and which requires the affordability assessment?

Section 80 sets out when an agreement is reckless. Section 81 requires the affordability assessment.

2. Which section requires the cost of credit and risks to be explained understandably?

Section 92.

3. What is the clearest single sign that a loan may have been reckless?

The person already had defaults, or was under debt review, when the credit was approved anyway.

4. Name the four things a court can order where lending was reckless.

Set the agreement aside, suspend the obligations, restructure the debt, or remove the reckless portion.

5. How long do most ordinary debts take to prescribe, and what takes thirty years?

Most ordinary debts, three years. Debts secured by a mortgage bond and judgment debts, thirty years.

6. What can restart the prescription clock?

Acknowledging the debt, for example by making a payment on it or admitting it in writing.

7. Sequestration applies to whom, and liquidation to whom?

Sequestration to a natural person. Liquidation, or winding-up, to a company or close corporation.

8. What does the Badenhorst rule hold, and which court confirmed it?

Winding-up must not be used to enforce a debt genuinely disputed on reasonable grounds. The Supreme Court of Appeal confirmed the approach in Afgri Operations v Hamba Fleet.

9. What is the advantage to creditors requirement?

A compulsory sequestration must show a real benefit to the general body of creditors, typically a meaningful dividend, not just one creditor chasing payment.

10. Someone says their company is being liquidated and their house is inside that company. Why is that urgent?

Because liquidating a property-holding company can be used to reach the home while sidestepping the judicial oversight and reserve-price protections that apply to an ordinary home repossession.

★ Level 4 recap

Reckless lending

Credit granted without a proper affordability check. Section 80 defines it, Section 81 requires the assessment, Section 92 requires proper disclosure, Section 83 gives the remedies. Five signs, the clearest being approval despite existing defaults or debt review. Four outcomes: set aside, suspended, restructured, reckless portion removed.

Evidence

The application, bank statements from the time, the credit report from that date, and the agreement. No strict deadline, but evidence fades after about three years. Never stop paying without the right legal step in place.

Prescription

Prescription Act 68 of 1969. Most ordinary debts, three years. Mortgage bonds and judgment debts, thirty years. Acknowledging a debt, including by paying on it, can restart the clock. Never assume either way.

Sequestration and liquidation

Sequestration for a person, liquidation for a company. Not debt-collection tools. Grounds to oppose: genuinely disputed debt under the Badenhorst rule confirmed in Afgri, no advantage to creditors, abuse of process, the proper remedy lies elsewhere, and procedural defects including a valid Section 345 demand. Watch for a home held inside a company.

Business rescue

Companies Act 71 of 2008. For a financially distressed company, to keep it trading or achieve a better result than liquidation. Ask: is the debt in a person's name or a company's name?

NOW TAKE THE LEVEL 4 TEST

You need **85 percent** to pass. When you do, download your certificate and move on to Level 5, the final level.