

## The Beginning of Extinctive Prescription by First Standard for Judgement

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### Abstract

The beginning moment of the extinctive prescription is indeed the crucial key to the design of the extinctive prescription system. According to the first paragraph of Article 128 of the Civil Law, the legislative model of the beginning moment of the extinctive prescription is based on the principle of an objective standard, which does not consider whether the creditor is aware of his/her rights, so that the creditor may suffer from the disadvantage of the completion of the prescription, which may lead to unreasonable conclusions in specific cases. As a result, it has been repeatedly criticized by scholars and also opposed by some practical cases, which has led to the call for reforming this outdated legislative model. Pursuant to the so-called double standard for judgment legislative model, the first standard for judgement of the beginning moment of the extinctive prescription is based on the subjective knowledge of the creditor, and the second one is based on the expiration of a certain maximum length of period. The academic version also adopts this legislative model. However, how to properly design the first standard for judgement should be reconsidered, although the first paragraph of Article 125 (1) of the Academic Draft stipulates that “a claim is extinguished by prescription if it is not exercised within five years from the time when the creditor knew or due to gross negligence failed to know that the claim may be exercised”, yet after

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considering the legislation of various countries and international law documents, this article suggests that it should be set as follow: “Unless otherwise provided by the act, a claim is extinguished by prescription if it is not exercised within five years from the end of the year in which: 1. the claim may be exercised and 2. the facts giving rise to the requirements of the claim and the debtor became known or were reasonably able to know to the claimant.”

**Keywords: Double standards for judgement, First standard for judgement, Claim may be exercised, Rule on reasonable discoverability, Object of knowledge, End-of-year system**