

	<u>CASE</u>	<u>FACTS / APPLICABLE TO</u>
	<i>Ex Parte Dow</i>	<p>F:- Applicant wanted marriage declared null & void, because the marriage took place in a garden – The judge found nothing wrong with a marriage in a garden – application failed</p> <p>A:- Prescribed marriage formalities (during ceremony)</p>
Void, voidable and putative marriages Requirements for a putative (assumed, acknowledged, accepted) marriage	<i>Moola vs Aulsebrook</i>	<p>F:- Applicant & her deceased husband went through marriage ceremony solemnised in accordance with Islamic rites by a priest who was not duly appointed as a marriage officer. (neither spouse was aware of that fact) They had 7 children – children couldn't inherit from father because was seen as born from unmarried parents. Argument was that marriage was putative marriage even though statutory requirements for solemnisation of marriage had not been complied with – Application was granted.</p> <p>A:- Requirements for a putative marriage</p>
Patrimonial consequence of a putative marriage	Zulu vs Zulu	Applicant entered into Civil Marriage ICOP. Husband already in Civil marriage ICOP with another woman, Only discovered at husband's death – Due to her not knowing, she claimed marriage to be putative and she was entitled to 1/2 estate – Court dismissed application. No matrimonial system can operate in a void marriage
<i>Household necessities – Termination of joint household</i>	<i>Excell vs Douglas</i>	<p>F:- Deals with basis of one spouse's liability for goods other spouse purchased on credit while there was no common household between them. One spouse has capacity to bind other & if marriage is in comm. of prop., the joint estate, for household goods only if 3 req are met:-</p> <ul style="list-style-type: none"> * Must be valid marriage between partners * Parties must share joint household * Transaction in Q must relate to household necessities <p>If req met – binds spouse in contractual nature But once joint household comes to an end – one spouse cant bind other in contractual nature</p> <p>A:- Household necessities – Termination of joint household</p>
<i>Household necessities – How its determined whether something is a household necessary</i>	<i>Reloomel vs Ramsay</i>	<p>F:- Factors which have to be taken into account such as spouse's standard of living etc. Should court take subjective / objective approach. In this case took subjective = viewed from perspective of the dealer. Takes into account factors of which the dealer was aware / ought to have been aware. (Objective approach = court takes into account all other factors without paying attention to what dealer knew about factors.)</p> <p>A:- Household necessities – How its determined whether something is a household necessary</p>
<i>The Maintenance Act 99 of 1998 (enforcement of maintenance orders)</i>	<i>Bannatyne vs Bannatyne</i>	<p>F:- After divorce, father accepted to pay maintenance & keep children on his medical scheme. But, failed to pay maintenance, so went to Maint Court to reduce payment amount. Succeeded. But still failed to make payment & took children of his medical scheme, refusing to pay for their medical cover. The constitutional court held that contempt of court proceedings are appropriate constitutional relief for the enforcement of a claim for the maintenance of children (if the legislative remedies are in some way deficient)</p> <p>A:- The Maintenance Act 99 of 1998 (enforcement of maintenance orders)</p>

Marriage in community of Property	<i>Nedbank vs van Zyl</i>	<p>F:- The merger of liabilities applies to antenuptial debts as well as debts incurred during the subsistence of the marriage. The spouses are joint debtors, therefore one spouse who is married in community of property cannot stand surety for the other spouse's debts because those debts are joint debts, and in our law a person cannot stand surety for his or her own debt, even if the spouse has assets falling outside of the joint estate</p> <p>A:- Marriage in comm. of prop – Liabilities</p>
	<i>De Wet v Jurgens</i>	Spouses married ICOP cannot stand surety for each others debts, as those debts are joint debts, and you cannot stand surety for your own debt. Today spouses married ICOP have equal concurrent powers of administration i.r.o the joint estate
<i>Alteration to matrimonial property system</i>	<i>Ex Parte Krös</i>	The court held that the matrimonial property system of spouses can be altered retroactively by the court to create flexibility.
	<i>Ex Parte Oosthuizen</i>	The court adopted a strict approach and held that the court does not have the power to change the matrimonial property system with retroactive effect
	<i>Ex Parte Burger</i>	The court held that if spouses want to introduce the accrual system in terms of section 21(1) they must apply the "normal basis of the accrual system" as provided for in chapter I of the Act.
	<i>Honey v Honey</i>	The court held that spouses cannot change their matrimonial property system without the court's intervention, even if they are married out of community or property.
	<i>Schwartz vs Schwartz</i>	<p>F:- Judge of Appeal, Corbett = To determine whether a marriage has reached such a state of disintegration that there is no reasonable prospect of restoration of a normal marriage relationship – Its important to have regard to what has happened in the past (history up to trial) & also present attitude of parties to marriage as revealed by evidence at trial.</p> <p>A:- Irretrievable breakdown of the marriage as ground for divorce – test to determine if the <i>consortium</i> has been terminated / violated</p>
	<i>Levy vs Levy</i>	SCA confirms Schwarst vs Schwarts view
	<i>Swart vs Swart</i>	<p>F:- Judge Flemming = Particular marriage has broken down when one spouse no longer wishes to continue marriage relationship, it indicates marital breakdown. Formation of an intention to sue for divorce = subjective element Court will look at scantiness & surmountability of reasons why divorce was applied for = Objective element</p> <p>A:- Irretrievable breakdown of the marriage as ground for divorce – test to determine if the <i>consortium</i> has been terminated / violated</p>
	<i>Amar v Amar</i>	(Jewish marriage) husband refused to grant the wife a get. If not granted the get, the woman may not re marry. If woman enters another marriage in such circumstances, the other marriage is deemed void in Jewish religion. Judge issued divorce decree, but ordered the husband who was unwilling to cooperate in giving the get, to pay maintenance to his wife until such time as he granted the get

	<i>Smit vs Smit</i>	<p>F:- Court was prepared to recognise existence of the power to refuse a decree of divorce</p> <p>A:- Does court have discretion to refuse a decree of divorce</p>
Forfeiture of benefits	<i>Wijker vs Wijker</i>	<p>F:- Factors prescribed in Sec 9 of Divorce Act need not all be present and need not be viewed cumulatively. The court also held that no-fault divorce did not do away with fault as a factor in respect of forfeiture orders. Further, it is submitted that an order for forfeiture of benefits may only be granted if the court is satisfied that in the absence of the order, one spouse will be unduly benefited in relation to the other.</p> <p>A:- Forfeiture of patrimonial benefit – Justness & fairness is no reason to deviate from matrimonial property system</p>
Forfeiture of benefits	<i>Watt vs Watt</i>	<p>F:- Benefits which can be forfeited in case of marriage out of com of prop includes the right to share in the accrual of the other spouse's estate, benefits by virtue of a succession clause & marriage settlements</p> <p>A:- Benefits which can be forfeited</p>
Redistribution of assets	<i>Beaumont vs Beaumont</i>	<p>1. F:- Appellate division held that the wording of Sec 7(4) is wide enough to cover the performance of the "ordinary duties" of a housewife</p> <p>A:- Redistribution of assets – Nature of contribution to the maintenance / increase of other spouse's estate – Ordinary Duties of a housewife contribution</p> <p>2. F:- Court held that a conservative approach to conduct should be adopted. Only if the breakdown of the marriage resulted from misconduct of 1 party only is this a factor that has to be taken into account</p> <p>A:- Redistribution of assets – Other considerations court takes into account - Misconduct</p> <p>3. F:- Court declined to accept one-third starting point. According to court, when the court has to decide what amount has to be transferred – it has to make an assessment of what is just.</p> <p>A:- Redistribution of assets – Criterion for est the extent of the redistribution</p>
	<i>Katz vs Katz</i>	<p>F:- Appellate division made it clear that contribution need not be of monetary nature.</p> <p>A:- Redistribution of assets – Nature of contribution to the maintenance / increase of other spouse's estate – Contribution need not be of monetary nature</p>
	<i>Maharaaj v Maharaaj</i>	<p>Pension interests are part of the assets of the parties to divorce proceedings for purposes of the division of assets.</p>
	<i>Grasso vs Grasso</i>	<p>F:- Judge Berman didn't support the modern trend. If a husband can afford to have his ex-wife not work after divorce & she didn't work prior to divorce, & particularly if his misconduct caused breakdown of the marriage – he should maintain her without her having to work. Judge said that the position would be different in the case of childless couples or where the husband didn't earn enough to support two separate homes after divorce</p> <p>A:- Maintenance of spouses – the move away from permanent maintenance</p>

	<i>Kroon vs Kroon</i>	<p>F:- Held that no national earning capacity will be attributed to a woman who doesn't have skills to enable her to be trained / retrained for a job after divorce Permanent maintenance wont be awarded to a woman who can support herself. But may be rewarded rehabilitative maintenance for a period sufficient to enable her to find a job.</p> <p>A:- Maintenance of spouses – the move away from permanent maintenance</p>
	<i>Kooverjee v Kooverjee</i>	
	<i>Zwiegelaat v Swiegelaar</i>	<p>"Whilst the section [s 7(2) of the Divorce Act 70 of 1979] may envisage periodic payments these need not be equal. In principle there can be no objection to an order which in effect makes provision for fixed monthly payments but in respect of one or more months makes provision for the payment of an increased amount ...".</p>
	<i>Pommerel vs Pommerel</i>	<p>F:- Courts normally accept that both spouses have to adopt a lower standard of living after divorce. It is a question of balancing up the needs of both parties & making an equitable distribution of the available income.</p> <p>A:- Maintenance of spouses – the move away from permanent maintenance</p>
	<i>McCall vs McCall</i>	<p>F:- Court provided nearly complete list of factors to be considered in deciding what is the best interest of the child regarding custody</p> <p>A:- Interests of children of divorcing parents – Criterion of "the best interests in the child"</p>
	<i>Van Vuuren vs van Vuuren</i>	<p>F:- Case contains guidelines in when a family advocate ought to investigate the arrangements regarding the child. The judge indicated that a family advocate ought to apply for an order authorising an enquiry if it is envisaged that:-</p> <ul style="list-style-type: none"> * Custody of a young child wont be awarded to the mother * Siblings will be separated * Custody will be awarded to a person other than the parent * An arrangement regarding custody or access will be made which is <i>prima facie</i> not in the child's interest <p>A:- Statutory protection of the child's interest – The Mediation in Certain Divorce Matters Act 24 of 1987</p>
	<i>Krugel vs Krugel</i>	<p>F:- As the quality of a parent's role is not simply determined by gender, a father can be just as good a "mother" as the child's biological mother, and conversely, the mother can be just as good a "father" as the child's biological father</p> <p>A:- Aspects regarding the position of the children the court may regulate – Joint custody</p>
	<i>Van Rooyen v Van Rooyen</i>	<p>(v) Although the mother has the freedom to choose her own lifestyle, her children's best interests cannot be served by allowing them to be exposed to the sexual relationship she is having with another woman.</p>
	<i>Gumede v Pres of RSA</i>	

	Daniels v Campbell	v	Daniels v Campbell- constitutional court held that a surviving spouse in a monogamous Hindu & Muslim marriage qualifies as a spouse and survivor in terms of Intestate Succession Act and Maintenance of Surviving spouse Act
	Hassam Jacobs	v	Cape HC extended application for Intestate succession act & Maintenance of surviving spouses act to de facto Polygynous Muslim marriages
	Ryland v Edros		Contracts following from de facto monogamous Muslim marriages can be recognized and enforced between parties, despite the fact that the marriage is potentially polygynous
	Amod multilateral motor vehicle accidents fund	v	Surviving spouse has an action for loss of support. SCA decision. Court held that the decisive issue is not whether surviving spouse was lawfully married to deceased by whether deceased was legally obliged to support surviving spouse in a relationship which was worthy of protection and recognition in terms of the common law. Should be legally enforceable at common law.
	Kahn v Kahn		North Gauteng HC recognized duty of support in de facto polygynous Muslim marriages. It was no longer contra bonos mores to recognize the duty of support that flows from a Muslim marriage, even if it is polygynous
	AM v RM		Court granted a Muslim woman's application for maintenance pendente lite in terms of rule 43 of the Uniform Rules of court even though the spouses never entered into a civil marriage
	Hoosein Dangor	v	Muslim marriage declared valid i.t.o SA law, for purposes on maintenance, and to have the non recognition of Muslim marriages declared unconstitutional
	Ismail v Ismail		Court held that contracts flowing from potentially polygynous marriage could not be enforced.. court rejected the finding
	Govender Ragavayah	v	Court declared the word "spouse" includes the surviving partner in a monogamous Hindu marriage
	Singh Ramparsad	v	Wife wanted amongst other things, the Hindu marriage declared valid and turned into a civil marriage, so the wife can divorce the husband. Court ruled that this was impossible, and the court cannot convert a religious marriage into a civil marriage

	<i>Volks v Robinson</i>	Constitutionality of not conferring spousal benefits to heterosexual life partners, challenged. Court held that it was inappropriate to impose a duty to support a partner, posthumously, if partner did not have a duty to support whilst still alive. Excluding life partners from statutory maintenance, is not unfair discrimination, as the law legitimately distinguishes between heterosexual life partners and spouses. Marriage is recognised internationally as an institution
	Langemaat v Min of Safety and Sec	A dependent is someone who relies on another for maintenance, this includes a same sex partner, By excluding them, and denying access to medical care it is discriminatory.
	Volks v Robinson	Constitutionality of not conferring spousal benefits to heterosexual life partners, challenged. Court held that it was inappropriate to impose a duty to support a partner, posthumously, if partner did not have a duty to support whilst still alive. Excluding life partners from statutory maintenance, is not unfair discrimination, as the law legitimately distinguishes between heterosexual life partners and spouses. Marriage is recognised internationally as an institution
	Satchwell v President of RSA	A same sex life partner's benefits may not be excluded, if a duty to support was undertaken
	Nat. coalition of gay and Lesb equality v Min of Home affairs	The denial of exemptions regarding immigration permits to foreigners who are same sex partners, for permanent residence in A, was declared unconstitutional
	Du Plessis v Road accident fund	SCA extended the commonlaw action for damages for loss of support to a surviving same sex partner, whos partner had undertaken to support him
	Farr v Mutual & Federal	Court held that phrase "a member of the policy holder's family in an insurance policy included the policy holders long standing same sex life partner
	J v Director gen development home affairs	Two lesbian partners had twins due to assisted reproduction. Woman wanted to be registered as "mother" and "parent" Dir GenI refused. Court ordered the registration as requested
	Du Toit v Min of welfare	Child care act failed to make provision for same sex life partners to be adoptive parents
	Gory v Kolver	Exclusion of same sex life partners from intestate inheritance was declared unconstitutional> Due to same sex life partners, not being allowed to enter in a valid marriage, they had to be afforded the same privileges