

DIFFERENT TYPES OF MARRIAGES AND THE VARIABLE

CONSEQUENCES OF A CIVIL MARRIAGE

1. MARRIAGES IN COMMUNITY OF PROPERTY

This type of marriage entails that the husband and wife become tied co-owners in undivided and indivisible half-shares of all the assets and liabilities they have at the time of their marriage as well as all the assets and liabilities they acquire during the marriage. Upon marriage, the spouses' separate estates are automatically merged into one joint estate for the duration of the marriage. Upon dissolution of the marriage, all liabilities are settled from the joint estate and the balance of the joint estate is then distributed equally between the spouses.

2. MARRIAGES OUT OF COMMUNITY OF PROPERTY

a) The Antenuptial Contract

Before parties get married, they must decide whether they wish their marriage to be in or out of community of property, as one cannot change your matrimonial property system postnuptially. If the spouses do not wish to be married in community of property, they have to enter into an Ant Nuptial Contract.

3. MARRIAGES OUT OF COMMUNITY OF PROPERTY AND COMMUNITY OF PROFIT AND LOSS WITHOUT THE ACCRUAL SYSTEM

Since the commencement of the Matrimonial Property Act, a marriage which is entered into with an Antenuptial Contract which excludes community of property and community of profit and loss is automatically subject to the accrual system. If the spouses decide that they do not wish the accrual system to apply to their marriage they have to stipulate this in their Antenuptial contract. In these types of marriages, both parties remain in the same financial position as they were before the marriage. Each spouse retains the estate he/she had before the marriage as well as everything he/she acquires during the marriage. In such a marriage each spouse has full

capacity to act and can enter into contracts without the other's assistance. The spouses can also freely enter into contracts with each other and they are not liable for each other's contractual debts as each spouse only binds him/herself. The spouses are also not liable for each other's dealings and can sue each other individually. They have full capacity to litigate and can independently institute or defend legal proceedings.

4. **MARRIAGES OUT OF COMMUNITY OF PROPERTY WITH THE INCLUSION OF THE ACCRUAL SYSTEM**

Section 2 of the Matrimonial Property Act provides that the accrual system applies to all marriages which are concluded out community of property and community of profit and loss after the coming in operation of the Act, on or after 1 November 1984, unless the system is expressly excluded in the couple's Antenuptial Contract. The accrual system can be described as a type of postponed community of profit. During the subsistence of the marriage, it is out of community of property and community of profit and loss. Each spouse retains and controls he/her own estate, but upon dissolution of the marriage, the spouses share equally in the accrual or growth their estates have shown during the duration of their marriage.