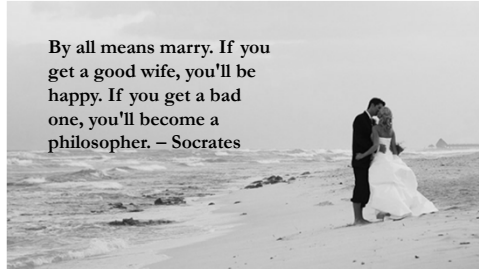


MATRIMONIAL MATTERS

An overview

By all means marry. If you get a good wife, you'll be happy. If you get a bad one, you'll become a philosopher. – Socrates



Forms of Matrimonial Property Systems

- In Community of Property
- Out of Community
- Out of Community with Accrual

In Community

- All debts incurred before marriage becomes joint debts after marriage
- All assets before marriage becomes joint assets after marriage
- Need written consent to certain transactions like sale of immovable property - Sec 15(2) of Matrimonial Property Act 88 of 1984
- Consent to institute or defend legal actions not relating to spouses profession – Sec 17 (1)

In Community

- Certain transactions need informal consent and can be ratified such as alienate common household furniture - Sec 15 (4)
- No consent necessary if in ordinary course of spouse's profession.
- Consequences of non-consent – void contract
- Third party can hold joint estate bound of did not know and could reasonable not have known that consent was required
- Non – consenting spouse will receive adjustment in favour on division

In Community

- Can exclude certain assets from joint estate ie inheritance from third party
- Spouses can have delictual claims against each other – Van der Merwe v Road Accident Fund 2006 4 SA 230 CC
- Spouse receive money from delictual claim -out of joined estate.

Out of community of property

- All assets and debts belong to the relevant party
- No claim against each other estate except in certain circumstances
- ANC must specifically exclude accrual
- Can make donations in ANC and will not have to pay donations tax
- May have verbal ANC – only valid inter partes

Accrual

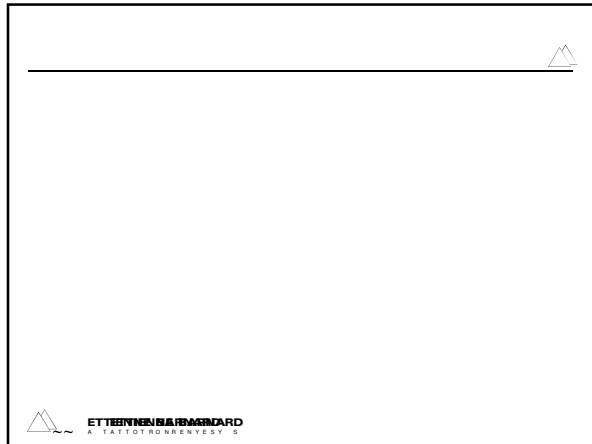
- Effect is same as out of community of property
- Can decide to have commencement value – don't have to
- Commencement value is adjusted by CPI at end of marriage to calculate accrual
- Donations and inheritance are excluded from estate

Drafting of ANC

- ANC
- Affidavits
- Power of Attorney
- Certificate
- Indemnification
- Account

Application for Late Registration

- High Court Application
- Sec 88 of Deeds Registries Act 47 of 1937
- Notice to Registrar of Deeds



Formalities of Marriage

- Marriage Act No 25 of 1961
 - Man and woman to exclusion of all others while it lasts
 - Marriage officer
 - Must be 18 years or consent (Sec 17 of the Children's Act 18 of 2005)
 - Ceremony must be in building with open doors (Ex Parte Dow 1987 (3) 829 D)

A small logo consisting of a triangle and the text "ETTESZÉSI BIZALMSZÁG A TÁTTÖRŐNKÉNYES 5" is located at the bottom left corner.

Customary Marriages

- Marriages entered into before the commencement of the Recognition of Customary Marriages Act 120 Of 1998, the proprietary consequences continue to be governed by customary law.
- The concepts of "in" or "out of community of property" are unknown in customary law.
- These marriages are regarded as out of community of property.

A small logo consisting of a triangle and the text "ETTESZÉSI BIZALMSZÁG A TÁTTÖRŐNKÉNYES 5" is located at the bottom left corner.

Customary Marriages

- Gumede v President of the Republic of South Africa 2009 (3) SA 152 (CC)
- Monogamous customary marriages
- Before Act – married in community of property
- Women have equal status and capacity
- Lacuna – polygamous marriages
- Act must be amended

A small logo consisting of a triangle and the text "ETTESZÉSI BIZALMSZÁG A TÁTTÖRŐNKÉNYES 5" is located at the bottom left corner.

Customary Marriages

- Recognition of Customary Marriages Act 120 Of 1998 – 15 November 2000
- Must be 18 years
- In accordance with customary law of indigenous people (so not Muslim or Hindu marriages)
- Must register the marriage within 3 months not invalidate marriage – just proof of marriage

A small logo consisting of a triangle and the text "ETTESZÉSI BIZALMSZÁG A TÁTTÖRŐNKÉNYES 5" is located at the bottom left corner.

Customary Marriages

- No spouse married under Marriage Act may enter into another marriage
- Should a husband wishes to enter into a further customary marriage, must apply to court to approve a written contract which will regulate the future matrimonial property system of his marriages

A small logo consisting of a triangle and the text "ETTESZÉSI BIZALMSZÁG A TÁTTÖRŐNKÉNYES 5" is located at the bottom left corner.

Customary Marriages

- The Act allows spouses to apply to court to change their marital system if married before commencement of act.
- Marriages entered into after the commencement of the Act, the proprietary consequences will depend on whether the marriage is monogamous or polygamous.

Customary Marriages

MONOGAMOUS CUSTOMARY MARRIAGES

- the property arrangement will be that of a marriage in community of property. These marriages have the same consequences as a civil marriage.
- Spouses can marry out of community of property provided they enter into an Antenuptial contract.

Customary Marriages

■ POLYGAMOUS CUSTOMARY MARRIAGES

- Take cognizance of the written contract which regulates the marriage, whether it be in or out of community of property.

Customary Marriages

- Thembisile v Thembisile 2002 (2) SA 209 (T)
- Netshituka v Netshituka [2011] ZASCA 120 (20 July 2011)
- Nullity

Civil Unions

- Civil Union Act 17 of 2006 – 30 November 2006
- Same sex and heterosexual couples to the exclusion of all others (sec 8)
- 18 years
- Same legal consequences as marriage in terms of Marriage Act 25 of 1961
- May not conclude marriage under Marriage Act or Customary Marriages act.

Consequences of Marriage

- Majority
- Right to intestate succession
- Children born during marriage presumed to be husband's
- Maintenance for both spouse and children



Living together

- Not formalised in our law
- No such thing as common law wife or husband
- Volks v Robinson 2005 (5) BCLR 446 (CC)



Living together

- In terms of the Insolvency Act 24 of 1936, a solvent spouse's property may be attached by the Master of the High Court, together with the insolvent spouse's property.
- Section 21(13) defines a spouse not only as a man / woman who is legally married, but also to a parties who are married in terms of any law or custom and also when a man / woman lives with his / her partner AS IF they are spouses, although they are not legally married.



Living together

- In the Pension Funds Act a "spouse" is defined as:
- *"a person who is the permanent life partner or spouse or civil union partner of a member in accordance with the Marriage Act, 1961 (Act No. 68 of 1961), the Recognition of Customary Marriages Act 1968(Act No. 68 of 1997), or the Civil Union Act, 2006(Act No. 17 of 2006), or the tenets of a religion; ..."*



Hindu marriages

- It is trite law that presently in terms of our law a Hindu marriage which has not been registered in terms of South African law is invalid
- Govender v Ragavayah NO 2008 (6) SA (D) – spouse for purposes of intestate succession
- Singh v Rampersal 2007 (3) SA 445 D – did not want to recognise Hindu marriage for purposes of divorce.



Muslim Marriages

- Women's Legal Centre Trust v President of the Republic of SA 2009 (6) SA 94 (CC)
- The applicant sought direct access to the Constitutional Court under s 167(4) (e) of the Constitution (relying on the CC's alleged exclusive jurisdiction in the matter).
- It complained that, notwithstanding express constitutional recognition of a system of personal and family law adhered to by people of a particular religion, the executive and legislature had failed to pass legislation recognising and regulating marriages concluded under Islamic law.



Muslim marriages

- A Muslim Marriages Bill –
 - which recognizes marriages concluded according to Islamic rites
 - Must be 18 years and consent to marriage
 - Polygamous marriages - must have consent from High Court
 - Divorce in terms of Divorce Act and Islamic law

Muslim marriages

- Daniels v Campbell 2004 (5) SA 331 CC - a party to a monogamous Muslim marriage is seen as a spouse – for purposes of intestate succession
- Hassim v Jacobs 2009 (5) SA 572 (CC) – polygamous Muslim marriage – spouse for purposes of intestate succession

Muslim marriages

- KHAN v KHAN 2005 (2) SA 272 (T)
- that the preamble to the Maintenance Act emphasised the establishment of a fair and equitable maintenance system premised on the fundamental rights afforded in the Constitution
- that partners in a Muslim marriage, married in accordance with Islamic rites, whether monogamous or polygamous, were entitled to maintenance and therefore fell within the ambit of the Act
- AM v RM 2010 (2) SA 223 (ECP)
- Rule 43 Application – Divorce process hanging in which requesting marriage to be declared valid.

Marriage is the sole cause of divorce



Consultation for Divorce

- Can not act for either party if drafted ANC
- Except if parties have reached a settlement
- Original Marriage Certificate
- Original ANC
- Decision between High Court and Special Divorce Court



Jurisdiction

- Sec 2(1) of Divorce Act 70 of 1979
 - Either party is domiciled
 - Ordinarily resident in jurisdiction and was ordinarily resident in jurisdiction for one year prior to day action instituted
- Jurisdiction of Regional Courts Amendment Act 31 of 2008 – came into operation on 9 August 2010
- Sec 28(1A) of Magistrate Court Act
 - Jurisdiction over either party who lived in jurisdiction of court
 - Ordinarily resident in jurisdiction for one year prior to day action instituted for Divorces

Jurisdiction

- Regional Court has same jurisdiction as High Court with regard to Divorce matters
Sec 29(1B)(b)
- Transitional Provision – any proceedings instituted in Divorce Courts not concluded before commencement of regional courts – must proceed in Divorce Courts
Sec 9(1) Reg
Court Act

Divorces - Jurisdiction

- If parties domiciled in SA, SA law will apply
- If parties not domiciled in SA then foreign law apply,
- Law of country of husband will dictate



Divorces - Summons

Out: All of Divorce Court Rules (since 15/10/10)

- Must be combined summons R 5(2)(b)
- Notice of defence now 10 days R 13(1)
- Summons must adhere to all requirements of Rules 5 and 6
- Claim for division, transfer or forfeiture must give details why entitled to in summons R 6(8)
- Must serve personally R 9(3)

Structure of Annexure

- Annexure to Summons
 - Description of parties
 - Domicilium
 - How married, date and place
 - Marriage still subsists
 - Details of children
 - Breakdown of Marriage
 - Forfeiture, accrual or sec 7(3) claim
- Parental Plan
- Annexure A (Regulation 2 of the Mediation in Certain Divorce Matters Act)
 - Copy of School reports
 - Copy of ANC
 - Statistics Form

Children

- Children's Act No 38 of 2005
- Sec 28(2) of Constitution – best interest of the child is of paramount importance
- Words custody and access been replaced by care and contact
- Family Advocate
 - mero metu
 - Court order
 - Annexure B
- All settlements where children to be endorsed by Family Advocate
- Child may have own attorney and legal aid may be applied for – legal aid board v r 2009 (2) SA 262 (D&CLD)

Grounds for divorce

- Parties have not lived together as man and wife for at least a year
- Defendant has committed adultery
- Been declared a habitual criminal
- Irretrievable breakdown of marriage and no prospect of reconciliation

Division of the estate

- In community of property
 - Assets shared equally unless forfeiture ito sec 9
 - Both liable for debts of joint estate
- Forfeiture (Sec 9):
 - Duration of marriage
 - Circumstances of breakdown
 - Substantial misconduct on part of a party
 - One party unduly benefited in relation to other



"Cheer up, buddy! She might have got the house...
but she can never take away your dignity!"

Division of estate

- Out of community – before 1 November 1984
 - Each spouse has separate estate
 - Can ask for transfer of portion of estate ito 7(3) and 7(4) of one party to another
 - contributed directly or indirectly to the maintenance or increase of the estate of the other party
 - the existing means and obligations of the parties
 - any donation made by one party to the other
 - any order which the court grants under sec 9
 - any other factor

Division of estate

- Out of community after 1 November 1984
 - No claim for transfer of assets

English Law prohibits a man from marrying his mother-in-law. This is our idea of useless legislation

Division of Estate

- Accrual System
 - Calculate value of assets
 - Deduct the following:
 - Commencement value adjusted with CPI
 - Assets excluded in the ANC or replacement of asset
 - Inheritance, legacy, or donation or replacement of asset
 - Non patrimonial loss is damages, but not adjusted with CPI

Division of the estate

- Accrual (cont)
 - The spouse whose estate shows the largest accrual must transfer half of the difference in the two accruals to the other spouse
 - Value not specific assets transferred
 - Can pay off in monthly instalments

Pension Interest

- Sec 7(8) of divorce act grants court authority to order that Pension interest be paid to non member when accrues
- Sec 37D of the Pension Funds Act can claim pension fund benefit by non member from date of divorce
- From 1 Nov 2008 if order was granted before 13 September 2007 then can claim pension fund benefit as at 13 September 2007

Pension Interest

- Out of Community of Property
 - Before 1 November 1984
 - Part of the spouses estate
 - After 1 November 1984
 - Not part of the spouses estate

Pension Interest

- Pension Interest includes:
 - Pension Fund
 - Provident Fund
 - Preservation Fund – Sec 37 (D)(6) of the Pension Funds Act
- Must adhere to rules of Pension Fund

Pension Interest

- Government Employees Fund does not fall under Pension Funds Act – so non member only paid when members interest accrue
 - Wiese v GEFP
 - 1 July 2011
 - Sections unconstitutional
 - Suspended for 12 Months
 - Must go to ConCourt to confirm



Pension Interest

- Retirement Annuity
 - Contributions plus interest at 15,5%
 - If amount less than above then lesser amount
 - As at date of divorce
- Retirement annuity is not a policy and non member can only get interest when accrues to member.



Pension Interest - Tax

- Order granted before 13 September 2007
 - Deduction made between 1 November 2008 and 1 March 2009:
 - then member is liable for tax, can claim back from non member depending on agreement
 - Deduction after 1 March 2009
 - Nobody pays tax



Pension Interest - Tax

- Order granted after 13 September 2007
 - Deduction made before 1 March 2009
 - then member is liable for tax
 - Deduction after 1 March 2009
 - Non member must pay
- If divorce order is after 1 March 2009 then tax is paid by non member
- Where full pension interest is transferred to another approved retirement fund it will be tax free



Pension Interest

- Settlement agreement or order must contain:
 - Name and registration number of Fund
 - Reference number of member spouse
 - Which part's interest is involved
 - The percentage or amount of the interest
 - Tax liability
 - To whom, how and when payment must be paid
 - An order that Fund must endorse its records with the agreement



Universal Partnership

- That the partnership has been entered into for the benefit of both parties;
- That the partnership has been entered into for the purposes of yielding a profit;
- That both parties made a contribution to the partnership (whether monetary or otherwise); and
- That the contract must be valid.

Universal Partnership

- The effect of a universal partnership is similar to that of a marriage in community of property and carries many of the same benefits and disadvantages
- Difficult to proof

Edictal Citation

- Summons must be served personally
- Must have permission to serve summons outside the RSA
- Application to Court
- Must know where Defendant is
- Translate Summons to language of country
- Documents sent to Department of Foreign Affairs to sent to embassy who will serve
- Certain countries summons may be served by attorney

Substituted Service

- Defendant is untraceable
- Must attempt to find defendant
- Indicate what newspaper will be published in

Edictal Citation/Substituted Service

Cf HC Rule 5

- EC def/resp **outside** S A 10(1)(a)
- SS d/r **inside** S A **but** unknown **where** 10(1)(b)

EC/SS Procedure

- Ex Parte Application
- No respondent is cited
- Application for authority to institute proceedings or directions as to procedure or service of documents may be done ex parte where service is not appropriate or not necessary
R55(4)(b)
- Application may be heard in chambers

EC/SS Affidavit Content

- Nature and extent of claim
- Grounds of claim
- Grounds for jurisdiction in main claim
- Suggested manner of service
- Info on def/resp whereabouts if known
- If not known:
 - Last known whereabouts
 - Enquiries made to establish current whereabouts

EC/SS

- Court may order as to manner of service as it deems fit
- Must also order the time within which notice of intention to defend is to be given
- Or any other step that is to be taken by the person to be served.
- Where service by publication is ordered,
 - it may be in a form similar to Form 4 of Annexure,
 - approved and signed by the registrar or clerk of the court.

EC/SS

- ***Practice Notes***
- A summons or order of court to be served by way of publication in a newspaper or other publication must be published in the **language** of the newspaper or publication unless otherwise ordered.
- As proof of such publication the whole page showing the name and the date of the newspaper should be filed.
- If only a cutting of the order is produced, the date and newspaper in which it was published should be proved by way of an affidavit.
- An explanation as to why the whole page was not submitted should also be given.

Form 1- Short Notice (1)

No. 1 - Notice of Motion (Short Form)

IN THE MAGISTRATE'S COURT FOR THE REGION OF
WESTERN CAPE
HELD AT SOMERSET WEST

CASE NO: 101/2011

In the matter of:
MALULEKA POWEL

Applicant

TAKE NOTICE that application will be made on behalf of
the above-named applicant on the 18th day of November
2011

Form 1- Short Notice (2)

at 9:00 or as soon thereafter as counsel may be heard
for an order in the following terms:

- (a) That leave be given to institute action against the
Defendant by way of Edictal Citation claiming a decree of
divorce

Form 1- Short Notice (3)

- (b) That service of the Edictal Citation and/or necessary processes of this Honourable Court be affected by service upon the Defendant by notice (complying substantially with Form 4 of this court) in The Evening Standard Newspaper before 30 November 2011
- (c) That the Defendant be given leave to defend the said action within one (1) month of date of this service.

Form 1- Short Notice (4)

and that the affidavit of MALULEKA POWEL annexed hereto will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

DATED at SOMERSET WEST on 15 November 2011

.....
Applicant/Applicant's Attorney

.....
To the Registrar Court of the abovementioned

Edictal Citation Form (1)

No. 4 - Edictal citation/substituted service: short form of process

IN THE MAGISTRATE'S COURT FOR THE REGION OF WESTERN
CAPE
HELD AT SOMERSET WEST

CASE NO: 101/2011

In the matter between:

MALULEKA POWEL

Plaintiff

and

BLUE MC DOWELL

Defendant

Edictal Citation Form (2)

To:

BLUE MC DOWELL, an adult female housewife
formerly residing at 56 Fitzroy Street, Observatory,
but whose present whereabouts are unknown:

TAKE NOTICE that by summons sued out of this
court, you have been called upon to give notice,
within 30 days after publication hereof, to the
registrar/clerk of this court and to the
plaintiff/plaintiff's attorney of your intention to
defend (if any) in an action wherein

Edictal Citation Form (3)

MALULEKA POWEL, an adult male Data
Capturer claims:

- (a) A decree of divorce
- (b) Division of the joint estate
- (c) Costs
- (d) Further and/or alternative relief

Edictal Citation Form (4)

TAKE NOTICE FURTHER that if you fail to give such
notice, judgment may be granted against you without
further reference to you.

DATED at Somerset West this 15 November 2011

Plaintiff/Plaintiff's Attorney

Address for service:

Etienne Barnard Attorneys

Ebrose Chambers

5 Audas Street

Somerset West

Tel 021.. & ref.....

.....
Registrar/Clerk of the Court

Maintenance - Wife

- Earning capacities
- Current or expected wealth
- Financial needs and obligations
- Ages of parties
- Duration of marriage
- Standard of living before divorce
- Behaviour as far as it is relevant to the breakdown
- Any factor that the court feels necessary



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ATTORNEYS AT LAW

Maintenance - Wife

- Can be ordered to pay re-settlement allowance or lump sum into Maintenance Act
- If wife works or can work usually not ordered
- Nominal maintenance
- Dum casta clause



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ATTORNEYS AT LAW

Maintenance - Children

- Usually amount in summons or settlement agreement coupled with CPI
- Can also go to Maintenance court if no order has been made yet
- If circumstances change can go to Maintenance Court
- Maintenance Act 99 of 1998
- Majority not necessarily end of maintenance
- Test is self supporting



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Maintenance - children

- Need of child on monthly basis – 2 parts adult to 1 part child
- Parent's contribution:
$$\frac{R(\text{Parent's gross income})}{R(\text{Total gross income both parents})} \times R(\text{child's need})$$



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Maintenance

- Wife lays complaint with Maintenance officer
- Subpoena is issued to attend enquiry
- Both parties must fill in schedule with monthly income and expenditure
- Proof must be attached
- Attempt to settle
- If not then referred to court
- Attorneys allowed at every stage



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Maintenance

- NB be careful with maintenance order in maintenance court
- If changes maintenance order of High Court it SUBSTITUTES it – Stinnes v Stinnes 1996 (2) All SA 475 (T)
- Cohen v Cohen 2003 (3) SA 337 (SCA)



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ATTORNEYS AT LAW

Maintenance

- Non Compliance
 - Criminal complaint
 - Warrant of execution
 - Emolument attachment
 - Garnishee attachment
 - Attachment of pension for future maintenance
 - Contempt of court

Maintenance

- KRUGER NO v GOSS AND ANOTHER 2010 (2) SA 507 (SCA)
 - Rehabilitative maintenance
 - Former husband's estate
 - Common law viewing spousal duty of support and consequent liability for maintenance as incidents of matrimonial relationship
 - Termination of relationship by death bringing duty to an end
 - The Maintenance of Surviving Spouses Act 27 of 1990 allowed widows and widowers, in specified circumstances, to be maintained from the estates of their late partners
 - Settlement agreement

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Domestic Violence Act

- Very wide definition of domestic partnership
- Court can order the respondent from refraining to:
 - committing any act of domestic violence;
 - enlisting the help of another person to commit any such act;
 - entering a residence shared by the complainant and the respondent:

Domestic Violence Act

- entering a specified part of such a shared residence;
- entering the complainant's residence;
- entering the complainant's place of employment;
- preventing the complainant who ordinarily lives or lived in a shared residence from entering or remaining in the shared residence or a specified part of the shared residence; or
- committing any other act as specified in the protection order.

Domestic Violence Act

- The court may impose on the respondent obligations as to the discharge of **rent or mortgage payments** having regard to the financial needs and resources of the complainant and the respondent.
- The court may order the respondent to pay **emergency monetary relief** having regard to the financial needs and resources of the complainant and the respondent, and such order has the effect of a civil judgment of a magistrate's court.

Domestic Violence Act

- Magistrate Court
- Interim Order
- Must be served on Respondent
- Return day
- Warrant of arrest ordered
- If contravene order must be arrested immediately
- Act has provisions to compel police to act

Mandament van Spolie

- To restore possession of assets taken without permission
- Urgent application
- Ownership is not a prerequisite
- Must be in peaceful and undisturbed possession
- Look at value of assets

Divorce - Undefended

- After service of summons wait for dies to lapse
- Can set down (request registrar in writing) if NOT:
 - Defended
 - Pleaded
 - Written notice that not defend R 22(5)
- Defendant can not consent to judgement R 11 (1) or (4)
- Settlement agreement
- Deed of settlement must be send to Family Advocate for consent

Divorces - undefended

- Notice of set down - no notice
- Practice note: 6 months after service, must give notice
- Marriage certificate
- Practice note: Require original marriage certificate, but certified copy will be accepted in good grounds
- CA can do Divorce in Regional Court
- Undefended divorce action postpone, may continue before another court R22(6)

What must proof

- Names of the parties
- Particulars of marriage – hand in original certificate
- Basis of courts jurisdiction
- Details of children
- Reasons for breakdown
- Basis for any parental powers claims
- Basis for any Maintenance claims
- Basis for any property claims
- If settlement agreement – hand in
- NB Court order - uplift

Practice Directives

- **Settlement Agreements**
 - Where the parties to a civil trial have entered into a settlement agreement, a presiding officer will make a settlement agreement an order of court only if –
 - The legal representatives of **all the parties** to the trial are present in court and confirm the signatures of their respective clients to the settlement agreement and that their clients **want** the settlement agreement made an **order of court**, or
 - **Proof** to the satisfaction of the presiding officer is provided as to the **identity** of the person who **signed** the settlement agreement and that the parties thereto **want** the settlement made an **order of court**.

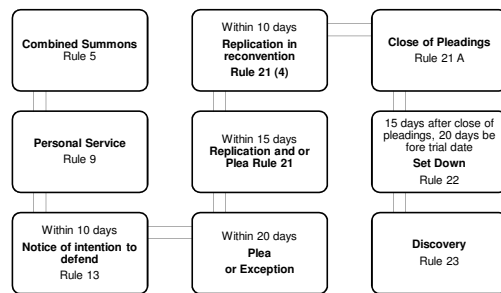
Practice Directive

■ Draft Orders

- Where the parties to a civil trial have settled the trial on the terms set out in a draft order, a presiding officer will make a draft order an order of court only if –
 - The legal representatives of **all the parties** to the trial are present in court and confirm that the draft order **correctly reflects the terms** agreed upon, or
 - **Proof** to the satisfaction of the presiding officer is provided that the draft order **correctly reflects the terms** agreed upon.

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Divorces Defended



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Opposed Action

- Follow normal trial procedure
- Try to settle
- Organise experts if need be
- Prepare for cross exam

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Mediation

- **MB v NB 2010 (3) SA 220 (GSJ)**
- Attorneys failing to counsel clients on benefits of mediation and in course of pre-trial conference positively rejecting its use. In casu mediation was better alternative and should have been tried. For this attorneys were to blame and should shoulder responsibility that came from failing properly to serve interests of their clients. Failure of attorneys to send matter to mediation at an early stage visited by court's displeasure. Court limiting fees attorneys could recover from clients to costs they could tax on party and party scale.
- **S v J (695/10) [2010] ZASCA 139 (19 November 2010)**
- Endorsed MB v NB

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Mediation

- National Accreditation Board of Family Matters (NABFAM)
- Family Mediators Association of the Cape (FAMAC)
 - Famac.co.za
 - info@famac.co.za
 - 0218016176
- South African Association of Mediators (SAAM)
 - info@saam.org.za
 - Fax: 0862730459
- KAFAM

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A TATOTRONRENYESY 5



Divorce - Costs

- Costs are scale C of Table A of Annexure 2
- Rule 58 costs:
 - Advocate max R 175-00 - undefended
 - Advocate max R 250-00 – defended
 - Attorney max – R 250-00 – undefended
 - Attorney max – R 375-00 – defended
 - Unless court directs otherwise

 ETIENNE BARNARD
A TATOTRONRENYESY 5



108

Non-compliance with order

- Application for variation of order
- Criminal Charge ito sec 35(1) of Children's Act a person refusing access to a child is guilty of an offence and can be sentenced up to one year
- Application to Court for imprisonment for contempt of court – but must prove intent not to comply

■ An Introduction to the Children Act's Application in the Magistrates' Court

Children

- Sec 28(2) of Constitution – best interest of the child is of paramount importance
- Mediation in Certain Divorce Matters Act 24 of 1987 - Family Advocate
 - mero metu
 - Court order
 - Annexure B

Children

- Children's Act No 38 of 2005 – 1 July 2007 and 1 April 2010
 - Regulations by the Department of Justice
 - Children's Court
 - Contribution orders
 - Child Abductions
 - Regulations by Social Development

Definitions

- Divorce Court
- Means the Divorce Court established in terms of section 10 of the Administration Amendment Act, 1929 (Act 9 of 1929)
- This act repealed by Jurisdiction of Regional Court Amendment Act 3 of 2008
- Sec 9(5) – any reference to Divorce Court is reference to Regional Court

Definitions

- Parent
 - Includes adoptive parent of child
 - Excludes:
 - Biological father of child conceived through rape or incest;
 - Any person who is related only of being of a gamete donor;
 - Any parents whose parental responsibilities and rights have been terminated.

Definitions

- **Care (used to be custody)**
 - within available means, providing the child with:
 - a **suitable place to live**;
 - living conditions that are conducive to the child's health, well-being and development; and
 - the necessary financial support;
 - **safeguarding and promoting** the well-being of the child;
 - guiding the behaviour of the child in a humane manner;
 - maintaining a sound relationship with the child;
 - accommodating any special needs that the child may have; and
 - generally, ensuring that the best interests of the child is the paramount concern in all matters affecting the child

Definitions

- **Care-giver**
 - any person **other** than a parent or guardian, who factually cares for a child and includes:
 - a foster parent;
 - a person who cares for a child with the implied or express consent of a parent or guardian of the child;
 - a person who cares for a child whilst the child is in temporary safe care;
 - the person at the head of a child and youth care centre where a child has been placed;
 - the person at the **head of a shelter**;
 - a child and youth care worker who cares for a child who is without appropriate family care in the community; and
 - the child at the **head of a child-headed household**;

Definitions

- **Contact (used to be access)**
 - maintaining a personal relationship with the child; and
 - if the child lives with **someone else**-
 - **communication** on a regular basis with the child in **person**, including
 - visiting the child; or
 - being visited by the child; or
 - **communication** on a regular basis with the child in **any other manner**, including-
 - through the post; or
 - by telephone or any other form of electronic communication;

Old v New Phrases

- **Divorce Act still refers to Custody, Access and guardianship**

Sec 7 – best interest of child standard

- McCall v McCall 1994 (3) SA 201 (C)
 - List of 13 factors
 - Last one - any other factor which is relevant to the particular case with which the Court is concerned.
- Act has list of 14 factors
 - Not open ended
 - Hopefully discretion

Sec 9 - Best interest of child paramount

- **Sec 28 (2) of the Constitution of SA**
 - **A child's best interests are of a paramount importance in every matter concerning the child**

Child participation

- **Sec 10**
- Every child has right to participate in any proceedings before court and his views must be given due consideration.
- **Sec 14**
- Every child has right to bring a matter to court and be assisted with it.

Child participation

- **Sec 29(6)(a)**
- The court may appoint a legal practitioner to represent the child in court proceedings
- **Sec 55**
- If court feel it is in best interest of child it can refer the matter to the Legal Aid Board

Child participation

- **Legal Aid Board v R 2009 (2) SA 262 (D&CLD)**
- *Failure to appoint legal representative for child necessarily resulting in **substantial injustice** to child. Legal Aid Board therefore being obliged to appoint legal representative to child involved in such dispute. Appointment **not requiring consent of guardian** or person(s) exercising parental responsibilities, or order of court. Constitution, sec 28(1) (h), read with Legal Aid Act 22 of 1969, s 3.*

Child participation

- **Legal Aid Board in re Four Children** (512/10) [2011] ZASCA 39 (29 March 2011)
- Children brought application in a quo
- Did not have standing as minors
- Curator ad litem
- Common for legal practioners to be appointed and then conduct legal action themselfe
- Legal Aid Board can be appointed as curator ad litem for children it represents

Enforcement of rights - Sec 15

- The persons, who may approach a court, are:
 - a child who is affected by or involved in the matter to be adjudicated;
 - anyone acting in the interest of the child or on behalf of another person who cannot act in their own name;
 - anyone acting as a member of, or in the interest of, a group or class of persons; and
 - anyone acting in the public interest.
- Sec 53 – the same

Guardianship – Sec 18

- Used to be parental power / authority
- Sec 18 codifies the common law
- Sec 18(1) – common law principle that not all components of parental authority need to vest in same person
- Sec 18(2) defines parental responsible and rights
 - to care for the child – was custody
 - to maintain contact with the child – was access
 - to act as guardian of the child; and – was parental power
 - to contribute to the maintenance of the child – separate duty

Guardianship – Sec 18

- A parent or other person who acts as guardian of a child must:
 - administer and safeguard the child's property and property interests;
 - assist or represent the child in administrative, contractual and other legal matters; or

Guardianship – Sec 18

- give or refuse any **consent required** by law in respect of the child, including-
 - consent to the child's **marriage**;
 - consent to the child's **adoption**;
 - consent to the child's **departure** or removal from the Republic;
 - consent to the child's application for a **passport**;
 - and
 - consent to the alienation or encumbrance of any **immovable property** of the child.

Guardianship – Sec 18

- **Sec 18**
 - Whenever **more than one person** has guardianship of a child, each one of them is competent, subject to this subsection, any other law or any order of a competent court to the contrary, to **exercise independently** and without the consent of the other any right or responsibility arising from such guardianship.
 - Unless a competent court orders otherwise, the **consent of all** the persons that have guardianship of a child is necessary when consent is required for **five** matters.

What court has jurisdiction for guardianship?

- High Court
 - Common Law
 - Sec 22(4)(b) - registration of parental plan
 - Sec 24(1) – application of guardianship by third party
 - Sec 28(1) – Termination, extension, suspension or restriction of parental responsibilities and rights.
 - Sec 45(3)(a) – a matter High court may adjudicate

What court has jurisdiction for guardianship?

- Divorce Court
 - Sec 22(4)(b) - registration of parental plan
 - Sec 28(1) – Termination, extension, suspension or restriction of parental responsibilities and rights.
 - Sec 45(3)(a) – a matter divorce court may adjudicate
 - Sec 29(1B)(b) Magistrate's Court Act - Regional Court has same jurisdiction as High Court with regard to Divorce matters and decide upon any question arising there from.

What court has jurisdiction for guardianship?

- Children's Court
 - Sec 22(4)(b) - registration of parental plan
 - Sec 28(1) – Termination, extension, suspension or restriction of parental responsibilities and rights.

What court has jurisdiction for guardianship?

- **BUT Sec 45(3)**
- Pending the establishment of family courts by an Act of Parliament, the High Courts and Divorce Courts have exclusive jurisdiction over the following matters contemplated in this Act *inter alia*:
 - The guardianship of a child;
 - the assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child;
 - the age of majority or the contractual or legal capacity of a child;

What court has jurisdiction for guardianship?

- **But Sec 22(7)**
- Only the High Court may confirm, amend or terminate a parental and rights agreement that relates to the guardianship of a child.
 - **But Sec 24**
- Any person who want to apply for guardianship of a child must apply to the High Court for an order

What court has jurisdiction for guardianship?

- **Ex Parte T C Sibisi 2011 (1) SA 192 (KZP) (Full Bench)**
- Having regard to the provisions of ss 22(4) (b), 23, 24, 26(1) (b) and 28 of the Children's Act 38 of 2005, referred to in s 29 of that Act, it is clear that s 29 of the Act does not confer jurisdiction upon the children's court to hear an application for an order granting guardianship to an applicant.
- Section 24, which provides for an order granting guardianship to the applicant, provides that application is to be made to the High Court.
- *Semle* : Intervention by the legislature may be necessary in this regard to clarify the jurisdiction, not only for children's courts, but also divorce courts, to determine the guardianship of children.

Sec 30 Co-holders of parental responsibilities and rights

- **More** than one person may hold parental responsibilities and rights in respect of the same child.
- Each of the co-holders may act **without the consent** of the other co-holder or holders when exercising those responsibilities and rights, except where this Act, any other law or an order of court provides otherwise.

Sec 30 Co-holders of parental responsibilities and rights

- A co-holder of parental responsibilities and rights **may not surrender or transfer** those responsibilities and rights to another co-holder or any other person,
- May by agreement with that other co-holder or person **allow** the other co-holder or person to exercise any or all of those **responsibilities** and rights on his or her behalf.
- An above agreement **does not divest** a co-holder of his or her parental responsibilities and rights and that co-holder remains competent and liable to exercise those responsibilities and rights

Major decisions involving child – Sec 31

- **Before** a person holding parental responsibilities and rights in respect of a child takes any decision involving the child, that person must give due **consideration** to any **views** and wishes expressed by the **child**, bearing in mind the child's age, maturity and stage of development.

Major decisions involving child – Sec 31

- **Major decision** is a decision
 - in connection with the giving or refusing any consent required by law in respect of the child, including
 - consent to the child's **marriage**;
 - consent to the child's **adoption**;
 - consent to the child's **departure** or removal from the Republic;
 - consent to the child's application for a **passport**;
 - and
 - consent to the alienation or encumbrance of any **immovable property** of the child

Major decisions involving child – Sec 31

- **affecting contact** between the child and a co-holder of parental responsibilities and rights;
- regarding the **assignment of guardianship** or care in respect of the child to another person; or
- which is likely to **significantly change**, or to have an adverse effect on, the child's living conditions, education, health, personal relations with a parent or family member or, generally, the child's well-being.
- Before making any decision, that person must give due consideration to any **views and wishes** expressed by any **co-holder of parental** responsibilities and rights.
- A decision is any decision which is likely to **change significantly** the co-holder's exercise of parental responsibilities and rights.

Major decisions involving child – Sec 31

- **J v J 2008 (6) SA 30 (C)**
 - *Custodian parent, though obliged to consider wishes of non-custodian parent, is not bound to give effect to such views and wishes. She may act independently. Failure to consider such views and wishes and to inform non-custodian parent of decision in terms of s 6(5) of Children's Act 38 of 2005 not rendering custodian parent's decision invalid. The decision subject to review, determining factor being best interests of child.*

Parental responsibility and rights of mothers – Sec 19

- The biological mother of a child, whether married or unmarried has full parental responsibilities and rights (guardianship) in respect of the child, except if there is a surrogacy agreement.

Parental responsibilities and right of married fathers - Sec 20

- The biological father of a child has full parental responsibilities and rights in respect of the child:
 - if he is married to the child's mother; or
 - if he was married to the child's mother at
 - the time of the child's conception;
 - the time of the child's birth; or
 - any time between the child's conception and birth

Parental responsibilities and right of unmarried fathers – Sec 21

- Common law position
 - No parental authority
 - Apply to High Court
- Natural Father of Children born out of Wedlock Act
 - Repealed by Children's Act

Parental responsibilities and right of unmarried fathers – Sec 21

- The biological father of a child who does not have parental responsibilities and rights in respect of the child, acquires full parental responsibilities and rights in respect of the child:
 - if at the time of the child's birth he is living with the mother in a permanent life-partnership; or

Parental responsibilities and right of unmarried fathers – Sec 21

- if he, regardless of whether he has lived or is living with the mother:
 - consents to be identified or successfully applies to be identified as the child's father or pays damages in terms of customary law;
 - contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and
 - contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.

Parental responsibilities and right of unmarried fathers – Sec 21

- This section does not affect the duty of a father to contribute towards the maintenance of the child.
- If there is a dispute between the biological father and the biological mother of a child with regard to the fulfillment by that father of the conditions set out above, the **matter must be referred for mediation** to a family advocate, social worker, social service professional or other suitably qualified person.

Parental responsibilities and right of unmarried fathers – Sec 21

- Any party to the mediation may have the outcome of the mediation reviewed by a court.
- This section applies regardless of whether the child was born before or after the commencement of this Act.

Parental responsibilities and right of unmarried fathers – Sec 21

- Permanent life partnership
- Reasonable Period
 - Does not have to pay full maintenance
 - Merely contribution
 - Even if have court order

Parental responsibilities and right of unmarried fathers – Sec 21

- ***S v J (695/10) [2010] ZASCA 139 (19 November 2010)***
- *Discusses the impact of Sec 21 of the Act. Confirm that unwedded fathers automatically requires parental rights if adhere to requirements of Sec 21.*

Presumption of paternity – Sec 36

- If in any legal proceedings in which it is necessary to prove that any particular person is the father of a child born out of wedlock it is proved that that person had **sexual intercourse** with the mother of the child at any time when that child could have been **conceived**, that person is, in the absence of evidence to the contrary which raises a reasonable doubt, presumed to be the biological father of the child.

Refusal to submit to taking blood samples – Sec 37

- If a party to any legal proceedings in which the paternity of a child has been placed in issue has **refused** to submit himself or herself, or the child, to the taking of a blood sample in order to carry out scientific tests relating to the paternity of the child, the court must warn such party of the effect which such refusal might have on the **credibility** of that party.

Blood Test

- **YM v LB 2010 (6) SA 338 (SCA)**
- In cases of disputed paternity scientific testing (such as blood or DNA testing) should not be ordered where paternity has been shown on a balance of probabilities

Parental responsibilities and rights agreements – sec 22

- The mother of a child or other person who has parental responsibilities and rights in respect of a child may enter into an **agreement** providing for the **acquisition** of such parental responsibilities and rights in respect of the child as are set out in the agreement, with-
 - the biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of either section 20 or 21 or by court order; or
 - any other person having an interest in the care, well-being and development of the child.

Parental responsibilities and rights agreements – sec 22

- A parental responsibilities and rights agreement must be in the prescribed format and contain the prescribed particulars – Form 4 of Dept of Social Dev Reg
- A parental responsibilities and rights agreement takes effect only if-
 - registered with the family advocate; or
 - made an order of the High Court, a divorce court in a divorce matter or the children's court on application by the parties to the agreement

Parental responsibilities and rights agreements – sec 22

- Only the High Court may confirm, amend or terminate a parental responsibilities and rights agreement that relates to the guardianship of a child.
- **But see Sec 30(3):**
- A co-holder of parental responsibilities and rights may not surrender or transfer those responsibilities and rights to another co-holder or any other person, but may by agreement with that other co-holder or person allow the other co-holder or person to exercise any or all of those responsibilities

Parental Plan – Sec 33

- The co-holders of parental responsibilities and rights may **agree on a parenting plan** determining the exercise of their respective responsibilities and rights.
- If the co-holders of parental responsibilities and rights are experiencing difficulties in exercising their responsibilities and rights, those persons, **before** seeking the intervention of a court, **must** first seek to agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.

Parental Plan – Sec 33

- In preparing a parenting plan the parties must seek-
 - the assistance of a family advocate, social worker or psychologist; or
 - mediation through a social worker or other suitably qualified person.

Parental Plan – Sec 34 - Formalities

- A parenting plan-
 - must be in writing and signed by the parties to the agreement; and
 - may be registered with a family advocate or made an order of court.
- Can be varied by either family advocate or court, which ever granted it.
- Dept of Social Dev Regulations 9 to 11

Application for contact or care by interested party – Sec 23

- Any person having an interest in the care, well-being or development of a child may apply to the High Court, a divorce court in divorce matters or the children's court for an order granting to the applicant, on such conditions as the court may deem necessary-
 - contact with the child; or
 - care of the child.

Application for contact or care by interested party – Sec 23

- When considering an application contemplated above, the court must take into account-
 - the best interests of the child;
 - the relationship between the applicant and the child, and any other relevant person and the child;
 - the degree of commitment that the applicant has shown towards the child;
 - the extent to which the applicant has contributed towards expenses in connection with the birth and maintenance of the child; and
 - any other fact that should, in the opinion of the court, be taken into account.

Application for contact or care by interested party – Sec 23

- The granting of care or contact to a person in terms of this section does not affect the parental responsibilities and rights that any other person may have in respect of the same child



Application for guardianship by interested party – sec 24

- Any person having an interest in the care, well-being and development of a child may apply to the High Court for an order granting guardianship of the child to the applicant.
- When considering an application as above, the court must take into account-
 - the best interests of the child;
 - the relationship between the applicant and the child, and any other relevant person and the child; and
 - any other fact that should, in the opinion of the court, be taken into account.



Application for guardianship by interested party – sec 24

- In the event of a person applying for guardianship of a child that already has a guardian, the applicant must submit reasons as to why the child's existing guardian is not suitable to have guardianship in respect of the child.



Termination, extension, suspension or restriction of parental responsibilities and rights – Sec 28

- A person referred to below may apply to the High Court, a divorce court in a divorce matter or a children's court for an order-
 - suspending for a period, or terminating, any or all of the parental responsibilities and rights which a specific person has in respect of a child; or



Termination, extension, suspension or restriction of parental responsibilities and rights – Sec 28

- extending or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.
- Such an application may be combined with an application in terms of section 23 for the assignment of contact and care in respect of the child to the applicant in terms of that section



Termination, extension, suspension or restriction of parental responsibilities and rights – Sec 28

- An application for this may be brought-
 - by a co-holder of parental responsibilities and rights in respect of the child;
 - by any other person having a sufficient interest in the care, protection, well-being or development of the child;
 - by the child, acting with leave of the court;
 - in the child's interest by any other person, acting with leave of the court; or
 - by a family advocate or the representative of any interested organ of state.



Contribution order – sec 161, 162, 163, 164, 165, 166

- A children's court may make an order instructing a respondent to pay a sum of money or a recurrent sum of money-
 - as a contribution towards the **maintenance or treatment** of, or the costs resulting from the other special needs of a child-
 - placed in alternative care; or
 - temporarily removed by order of the court from the child's family for treatment, rehabilitation, counseling or another reason; or
 - as a short-term **emergency contribution** towards the maintenance or treatment of, or the costs resulting from, the other special needs of a child in urgent need.

Contribution order – sec 161, 162, 163, 164, 165, 166

- A contribution order takes effect from the date on which it is made unless the court orders that it takes effect from an earlier or later date.
- A children's court may vary, suspend or rescind a contribution order or revive the order after it has been rescinded.
- If a court other than the court which made a contribution order varies, suspends, rescinds or revives the order in terms of subsection (3), the clerk of the first-mentioned court must immediately inform the clerk of the last mentioned court of such variation, suspension, rescission or revival.

Refusal of access – sec 35

- If a person has a right to guardianship and care or custody of child and another person prevents access to the child – that person is guilty of an offence and may be imprisoned for a year.
- Person having care or custody and another person has access to the child then that person must inform the other person on change of address, failure which will be a criminal offence.

Children's court

- **Court - Sec 42**
- Every Magistrate's Court shall be a children's court and shall have jurisdiction for the application of the act within the area of its jurisdiction.
- **Status - Sec 43**
- Children's Court has status of magistrate' court at district level.

Children's court

- **Jurisdiction - Sec 44**
- The children's court that has jurisdiction in a particular matter is-
 - the court of the area in which the child involved in the matter is ordinarily resident; or
 - if more than one child is involved in the matter, the court of the area in which any of those children is ordinarily resident.
 - Where it is unclear which court has jurisdiction in a particular matter, the children's court before which the child is brought has jurisdiction in that matter.

Matters court may adjudicate – Sec 45

- A children's court may adjudicate any matter, *inter alia*
 - the protection and well-being of a child;
 - the care of, or contact with, a child;
 - paternity of a child;
 - support of a child;
 - the temporary safe care of a child;
 - alternative care of a child;
 - the adoption of a child, including an inter-country adoption;
 - any other matter relating to the care, protection or well-being of a child provided for in this Act.

Matters court may adjudicate – Sec 45

- A children's court-
 - may try or convict a person for non-compliance with an order of a children's court or contempt of such a court;
 - may not try or convict a person in respect of a criminal charge other than in terms of paragraph 45(1)(a) ; and
 - is bound by the law as applicable to magistrate's courts when exercising criminal jurisdiction in terms of paragraph (a)

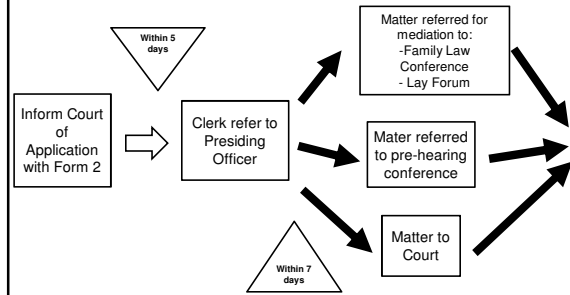
Lay-forum hearings - Sec 49

- A children's court may, before it decides a matter or an issue in a matter, order a lay forum hearing in an attempt to settle the matter or issue out of court, which may include-
 - mediation by a family advocate, social worker, social service professional or other suitably qualified person;
 - a family group conference contemplated in section 70; or
 - mediation contemplated in section 71.

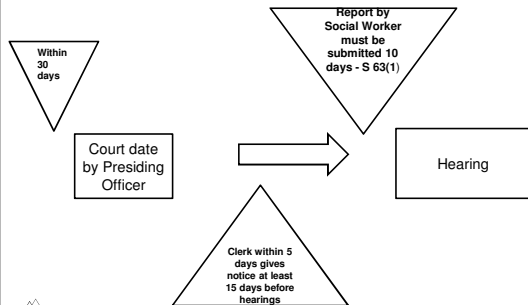
Rules and court proceedings – Sec 52

- Except as is otherwise provided in this Act, the provisions of the Magistrates' Courts Act, 1944 , and of the rules made in terms thereof as well as the rules made under the Rules Board for Courts of Law Act, 1985, apply, with the necessary changes required by the context, to the children's court

Rules 6 and 7 Justice Regulations



Rules 6 and 7 Justice Regulations



Legal representation – sec 54

Any person appearing before the court is entitled to legal representation at their own expense

Attendance at proceedings – Sec 56 and 57

- Proceedings of a children's court are closed and may be attended *inter alia* only by-
 - a person performing official duties in connection with the work of the court or whose presence is otherwise necessary for the purpose of the proceedings;
 - the child involved in the matter before the court and any other party in the matter;
 - the legal representative of a person who is entitled to legal representation;
 - a person who obtained permission to be present from the presiding officer of the children's court; and
 - the designated social worker managing the case.

Conduct of proceedings – sec 60

- The **presiding officer** in a matter before a children's court **controls** the conduct of the proceedings, and may-
 - **call** any person to give evidence or to produce a book, document or other written instrument;
 - question or **cross-examine** that person; or
 - to the extent necessary to resolve any factual dispute which is directly relevant in the matter, **allow** that person to be questioned or cross-examined

Conduct of proceedings – sec 60

- If a child is present at the proceedings, the court may order any **person** present in the room where the proceedings take place to **leave** the room if such order would be in the best interests of that child.
- Children's court proceedings must be conducted in an informal manner and, as far as possible, in a relaxed and **non-adversarial** atmosphere which is conducive to attaining the co-operation of everyone involved in the proceedings.

Participation of children – sec 61

- The presiding officer in a matter before a children's court must-
 - allow a **child** involved in the matter to **express a view** and preference in the matter if the court finds that the child, given the child's age, maturity and stage of development and any special needs that the child may have, is able to **participate** in the proceedings and the child chooses to do so;
 - **record the reasons** if the court finds that the child is **unable to participate** in the proceedings or is unwilling to express a view or preference in the matter; and
 - **intervene** in the questioning or **cross-examination of a child** if the court finds that this would be in the best interests of the child.

Participation of children – sec 61

- A child who is a party or a witness in a matter before a children's court must be questioned through an intermediary as provided for in section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) if the court finds that this would be in the best interests of that child.
- The court-
 - may, at the outset or at any time during the proceedings, order that the matter, or any issue in the matter, be disposed of separately and in the **absence of the child**, if it is in the best interests of the child; and
 - **must record the reasons** for any order

Appeals sec 51

- Any party involved in a matter before a children's court may appeal against any order made or any refusal to make an order, or against the variation, suspension or rescission of such order of the court to the High Court having jurisdiction.
- An appeal must be noted and prosecuted as if it were an appeal against a civil judgment of a magistrate's court.

Publication of information – sec 74

- No person may, without the permission of a court, in any manner publish any information relating to the proceedings of a children's court which reveals or may reveal the name or identity of a child who is a party or a witness in the proceedings.

Removal of Children

- Sec 151 and Sec 152
- Declared unconstitutional
- Did not afford parties the opportunity to approach court
- Must bring children before court within 24 hours
- **Chirindza v Gauteng Department of Health**
- North Gauteng High Court, case no 47723/2010, 30/5/11

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