



# HOW DOES SPOUSAL MAINTENANCE WORK?



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Introduction

## **Webinar Overview**

- Post divorce support of spouses and partners of civil unions
- Factors that the court take into consideration in ordering spousal maintenance
- Discussion of the earning capacities of the parties
- Defining the “clean break” principle applied by the Courts
- What and why is token maintenance awarded
- “Dum casta” clause found in many agreements
- Does subsequent marriages have an influence on spousal maintenance?
- Explaining when and how to apply for spousal maintenance





What to expect

# Structure of our Lunch and Learn webinars

Pre-reading  
material

Webinar

Resources &  
Templates



How does spousal maintenance work?

## Post-divorce support of spouses and partners of civil unions



- Reciprocal duty of support as invariable consequence of marriages and civil unions – termination?
- No right to spousal maintenance – to be proven.
- Spousal maintenance *before or upon* divorce only.
- Enforcement of claim after death.

How does spousal maintenance work?

# Requirements for spousal maintenance



- No right to spousal maintenance, an entitlement as such must be proven.
- A need to be supported must be proven.
- Maintenance rests on the **means and needs** of the parties in light of their **earning capacities**.
- Divorce Act and court's discretion to award spousal maintenance.
- Factors (on next slide) determines need and means.



How does spousal maintenance work?

## Relevant factors

- 1) Existing and prospective means of the parties
- 2) Earning capacities of the parties, clean break principle & rehabilitative maintenance
  - 3) Financial needs of parties
  - 4) Duration of the marriage
- 5) Standard of living before divorce/ during marriage
  - 6) Parties' age
- 7) Conduct (leading to breakdown of marriage)
- 8) Order for the division of assets in terms of s7 of the Divorce Act
  - 9) Token maintenance
- 10) Assistance in materially building the other spouse's estate
  - 11) Additional factors



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## Earning capacities of parties



- Often a deciding factor.
- Courts are reluctant to grant an uneconomical spousal maintenance order.
- Clean-break principle is relevant, but rehabilitative maintenance is possible.

### Relevant factors:

- Age
- Qualifications
- Employment status
- Number of dependent children

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## **Clean-break principle**



- Definition: striving for economic independence of parties post-divorce.
- Rationale: Guards against unnecessary, uneconomical awarding of spousal maintenance.
- Decided on a case-by-case basis as it depends on the circumstances of each case.



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## Token maintenance



- Definition: nominal maintenance awarded to allow potential variation in future.
- Rationale: Keep the door open if spousal maintenance is not decided upon divorce.
- Spousal maintenance cannot be awarded after divorce finalization.
- R1-example.

How does spousal maintenance work?

## **“Dum casta” clauses**



- Definition: clause with effect to forfeit maintenance if recipient spouse does not lead a chaste life or enters into a subsequent relationship.
- Must be clear as a court will not lightly read it in.
- Rationale: support from another source justifies variation or suspension of existing maintenance order

How does spousal maintenance work?

# The impact of subsequent marriages on spousal maintenance



- Entitles the paying party to apply for suspension or termination of the maintenance agreement due to double-support.
- Assumption if no duration is stated.
- *Dum casta* clause to the effect that maintenance ceases upon remarriage or cohabitation.



How does spousal maintenance work?

## When you can apply for spousal maintenance



- Before finalization of divorce OR pending divorce
- Prove needs and means
- **Indicators:**

Likely success	Lesser prospects of success
Little or no estate built during marriage	Claiming excessive cost of living during marriage
Lower earning capacity	Parties' misconduct
Older age and/or unable to work	Ability to work
Assistance in building the other spouse's estate	Unreasonable claims

How does spousal maintenance work?

# How to apply for spousal maintenance (against a living estate)



Pending divorce	Upon divorce
Interim maintenance before divorce is finalized	Awarding maintenance in decree of divorce
High Court: Rule 43 Application	<i>Before</i> the divorce is final
Regional Magistrate's Court: Rule 58 Application	Divorce Court/ High Court
Notice of Motion	Token maintenance to allow Maintenance Court jurisdiction

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## Discussion



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