

## PRE-READING



Webinar: **PARENTAL RIGHTS AND RESPONSIBILITIES**  
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### 1. Introduction

Parental rights and responsibilities are found in section 18(2) of the Children’s Act 38 of 2005 (hereinafter the “Act”). Section 18(2) states: “The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right –

- (a) to care for the child;
- (b) to maintain contact with the child;
- (c) to act as guardian of the child; and
- (d) to contribute to the maintenance of the child.”

### 2. Which court(s) can deal with matters relating to parental rights and responsibilities?

#### 2.1 General point of departure

The acquisition and/or termination of parental rights and responsibilities can be dealt with either in the High court, Divorce court in divorce proceedings, Children’s court or the Maintenance court. Maintenance court only deals with matters relating to maintenance. The High court is the upper guardian of all minor children. This means that the High court has the jurisdiction to terminate, suspend and extend any or all parental rights and responsibilities. The Children’s court only has jurisdiction to deal with matters relating to the care of and contact with the minor children.

#### 2.2 How to approach the High court

The High court is the upper guardian of all minor children. It should be noted, that should you wish to approach the High Court, you will require legal representation. This makes approaching the

High court more expensive and therefore less accessible to the general public. The High court does however have the jurisdiction to hear matters relating to any or all of the parental rights and responsibilities.

### 2.3 How to approach the Divorce court

If you wish to acquire parental rights and responsibilities at the time of divorce this can be done by means of a parenting plan, section 22 agreement or a divorce settlement agreement. A parenting plan is a written agreement entered into between the biological mother and father with the assistance of an independent third party such as a mediator or family law practitioner. The parenting plan will outline how parental rights and responsibilities are to be exercised and how the children are to be raised in the two separate homes. The parenting plan can be annexed to the divorce settlement agreement and form part of the divorce order. This is an ideal situation when dealing with an uncontested divorce.

Section 22 agreement is also known as a parental responsibilities and rights agreement. This agreement can be entered into between the biological mother and/or father with any other person who has an interest in the well-being, care, and development of the child such as a grandparent. This is done to acquire either full or specific parental rights and responsibilities. The divorce settlement agreement can set out how parental rights and responsibilities should be dealt with. This is an ideal situation when dealing with an uncontested divorce. The settlement agreement is then attached to and forms part of the divorce order.

### 2.4 How to approach the Children's court

In most instances the Children's court is the more accessible court. Every Magistrate's court also sits as a Children's court in their district. Therefore, a parent and/or any person having interest in the well-being, care, and development of the child has to approach the Magistrate's court nearest to where the child lives (and not where the applicant lives). Section 45(1) of the Act extensively sets out which issues can be heard in the Children's court. Among others this includes "adjudicating any matter involving the care of, or contact with a child."

When approaching the Children's court a Form 2 application must be completed and supported by an affidavit setting out the reasons why the court is being approached. These forms are then submitted to the clerk of the court.

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**Reference list:**

The Children's Act 38 of 2005.