



FORFEITURE OF PATRIMONIAL BENEFITS IN DIVORCE PROCEEDINGS

In South Africa, divorce proceedings require the party initiating the divorce to provide reasons for the irretrievable breakdown of the marriage. Adultery and infidelity are common grounds for divorce, and in many cases, the spouse who feels wronged may seek to have their partner forfeit their share of the marital estate. The purpose of forfeiture is to prevent a spouse from benefiting from a marriage they have deliberately undermined.

Matrimonial Property Systems in South Africa

The Matrimonial Property Act 88 of 1984 outlines three types of matrimonial property regimes:

- **Marriage in Community of Property:** This regime combines both spouses' estates into one shared estate. If the marriage is dissolved, the estate is divided equally between the two parties.
- **Marriage out of Community of Property with Accrual:** In this case, each spouse keeps their separate estate, but the spouse whose estate has grown less during the marriage may claim a portion of the other spouse's estate based on the growth.
- **Marriage out of Community of Property without Accrual:** Here, each spouse has a separate estate, and generally, there is no sharing of assets unless specified in a donation or will.

Even if spouses are married out of community of property, one spouse may still benefit from the other's estate through gifts, a will, or intestate succession if the other spouse passes away without a valid will.

Legal Basis for Forfeiture of Patrimonial Benefits

The legal grounds for claiming forfeiture are found in Section 9(1) of the Divorce Act 70 of 1979, which states:

"When a decree of divorce is granted on the ground of the irretrievable breakdown of the marriage, the Court may make an order that the patrimonial benefits of the marriage be forfeited by one party in favour of the other, either wholly or in part, if the Court, having regard to the duration of the marriage, the circumstances which gave rise to the break-down thereof and any substantial misconduct on the part of either of the parties, is satisfied that, if the order for forfeiture is not made, the one party will in