



Calculation of Spousal Maintenance Claims

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November 2023

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AGENDA

- ☐ The Maintenance of Surviving Spouses Act
- ☐ Components of the Calculation
- ☐ Definition of Spouse

THE MAINTENANCE OF SURVIVING SPOUSES ACT 27 OF 1990

☐ Why is the calculation based on the act?

☐ The Act:

(1) If a marriage is dissolved by death after the commencement of this Act the survivor shall have a claim against the estate of the deceased spouse for the **provision of his/her reasonable maintenance needs** until his death or remarriage in so far as he is not able to provide therefor from his own means and earnings.

In the determination of the **reasonable maintenance needs** of the survivor, the following factors shall be taken into account in addition to any other factor which should be taken into account:

(a) The **amount in the estate** of the deceased spouse **available for distribution** to heirs and legatees;

(b) the **existing and expected means, earning capacity, financial needs and obligations** of the survivor and the **subsistence** of the marriage; and

(c) the **standard of living** of the survivor during the subsistence of the marriage and **his/her age** at the death of the deceased spouse.

COMPONENTS OF THE CALCULATION

- ☐ Capitalised value of reasonable past and future living expenses
- ☐ Less Benefits due to the claimant due to the death of the deceased
- ☐ Less Value of the claimant's means from which to cover living expenses
- ☐ Less Other adjustments
- ☐ The amount in the estate places a boundary on the claim

CAPITALISED VALUE OF REASONABLE PAST AND FUTURE LIVING EXPENSES

☐ Reasonability

- ☐ Take deceased spouse's income into account
- ☐ Schedule of living expenses -> check for reasonability.

☐ Calculation:

- ☐ The capitalised value of future expenses/costs payable in respect of an individual has been determined using the **actuarial present value method**.
- ☐ Each item is projected to the date on which it is expected to occur using the **inflation rate applicable** to that item (e.g. price, earnings, medical, medical aid inflation).
- ☐ The projected value is then adjusted for the **probability of the claimant surviving to that date** (South African Life Tables 1984 - 86 (Table 2),
- ☐ and then **discounted** back to the date of calculation using the assumed **investment return** (sometimes referred to as interest). Gives rise to **net discount rate**.
- ☐ The **investment return** represents the return that the claimant would need to invest the capitalised value at, in order for all the future expenses/costs to be provided for. The resultant capitalised value is referred to as the **expected net present value of the future expenses/costs**.
- ☐ **Past** expenses/costs from a source/report before the date of calculation, **are inflated to today's money terms**. The **investment return is not taken into account** for expenses/costs that occurred between the report date and the date of calculation.

LESS BENEFITS DUE TO THE DEATH OF THE DECEASED

- ☐ Insurance payouts not yet received
- ☐ Pension payouts not yet received
 - ☐ If monthly pension, take mortality and taxation into account

LESS VALUE OF THE CLAIMANT'S MEANS FROM WHICH TO COVER LIVING EXPENSES

- ❑ Assets, including investments
 - ❑ Market values
 - ❑ Rights, trusts
 - ❑ Living annuity
 - ❑ Montanari judgement
 - ❑ Need to take taxation into account
 - ❑ Which drawdown rate to use?
 - ❑ Some assets excluded if it meets a need (e.g. home)
- ❑ Earnings capacity
 - ❑ Capitalised value of future earnings
 - ❑ Taking into account current earnings, inflation, promotions, mortality, investment return
 - ❑ Industrial psychologist report.

AMOUNT IN THE ESTATE

- ❑ Places a boundary on the claim
 - ❑ L&D account
 - ❑ Proportionate adjustment might be required.

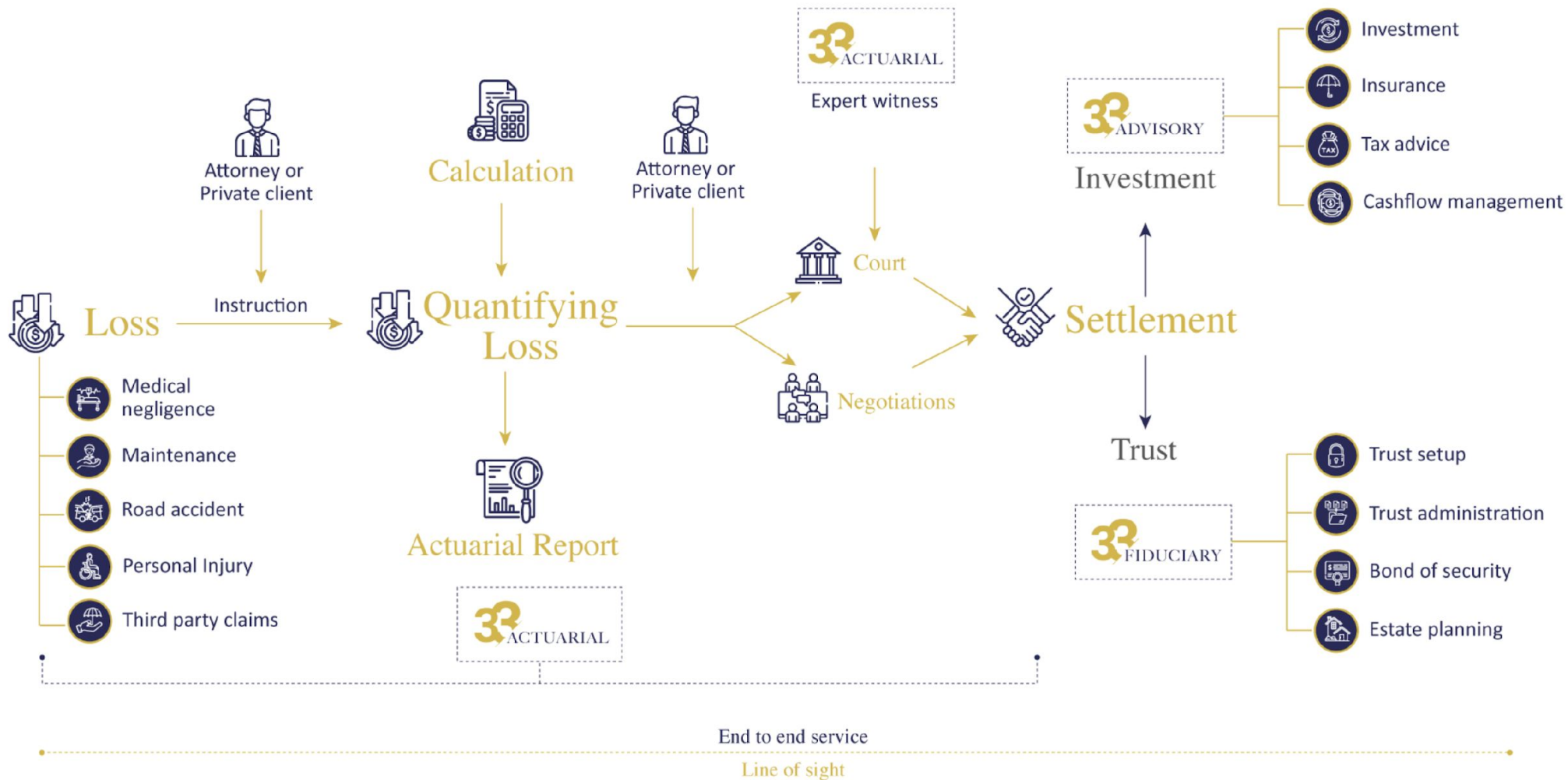
DEFINITION OF SPOUSE

“survivor” means the surviving spouse in a marriage dissolved by death, and includes a spouse of a customary marriage which was dissolved by a civil marriage contracted by her husband in the customary marriage to another woman on or after 1 January 1929 (the date of commencement of sections 22 and 23 of the Black Administration Act, 1927 (Act No. 38 of 1927)), but before 2 December 1988 (the date of commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988 (Act No. 3 of 1988));

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