

Unworthiness to benefit – a case of life and death

FISA AGM

15 April 2026

Dr. Rika van Zyl FPSA® CFP®

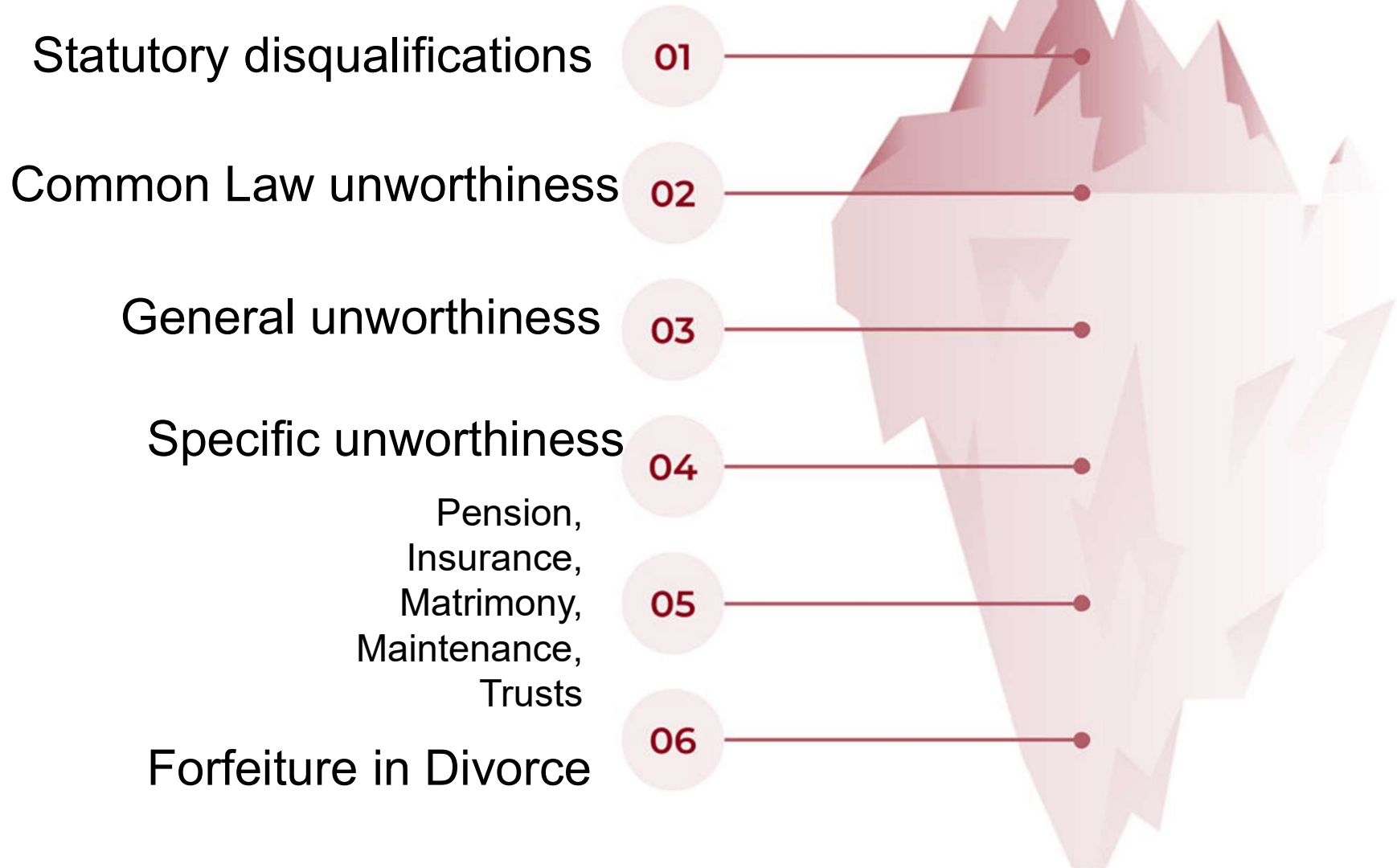


T: +27 51 401 2823 | E: vanzylr2@ufs.ac.za | www.ufs.ac.za
Utilising your official institutional email address and phone number is optional

*Inspiring excellence, transforming lives
through quality, impact, and care.*



Unworthiness to benefit



(In)Testate benefit

- Generally, everyone can benefit (qualify as intestate heir)
- Statutory disqualifications

- Sec 4A Wills Act:

Blom v Brown 2011 (SCA)

- attests and signs (or writes out) as witness (in presence of testator) and spouse of such person \neq inherit (or be executor, trustee, guardian)
- court may overrule if not defraud / unduly influenced
 - would have been an intestate heir (if not exceeding intestate value)
 - if additional 2 witnesses attested, signed



Common Law Unworthiness

Disqualification from Inheriting

Must be blameworthy (link between benefit and harm)



Receive an inheritance by unlawful act committed against the deceased

Taylor v Pim 1903 NLR 484;
Casey v The Master 1992 (4) SA 505 (N)



Causes death of testator



Murdered a *conjunctissimi personae* (close family member) of the deceased (spouse, parents, children)

Yassen v Yassen 1965 N



Concealed/destroyed the will of the testator

Forged a will

Pillay v Nagan 2001 D



Contrary to public policy

not necessarily
caused death

General unworthiness

- No person may be enriched by his own unlawful conduct, or benefit from conduct that is punishable.
- “The causes which may render the heir unworthy of the succession are indefinite ... if there should happen any other case where good manners and equity should require that an heir should be declared unworthy, it would be **just** to deprive him of the inheritance.” (*Danielz v De Wet* 2009 (6) SA 42 (C) par 38)
 - Father deemed unworthy to inherit intestate from deceased son (no relationship) on “public policy” basis (*Jacobs v Adams* [2025] ZAGPJHC 746)
 - daughter deemed unworthy to inherit from deceased father based on financial abuse and fraud on “broader” general unworthiness basis (*Lombard v Van Der Merwe and Others* (M541/23) [2026] ZANWHC 69)



Specific unworthiness

- Bloody hand principle (*de bloedige hand neemt geen erf*)

Ex parte Steenkamp 1952 (T)

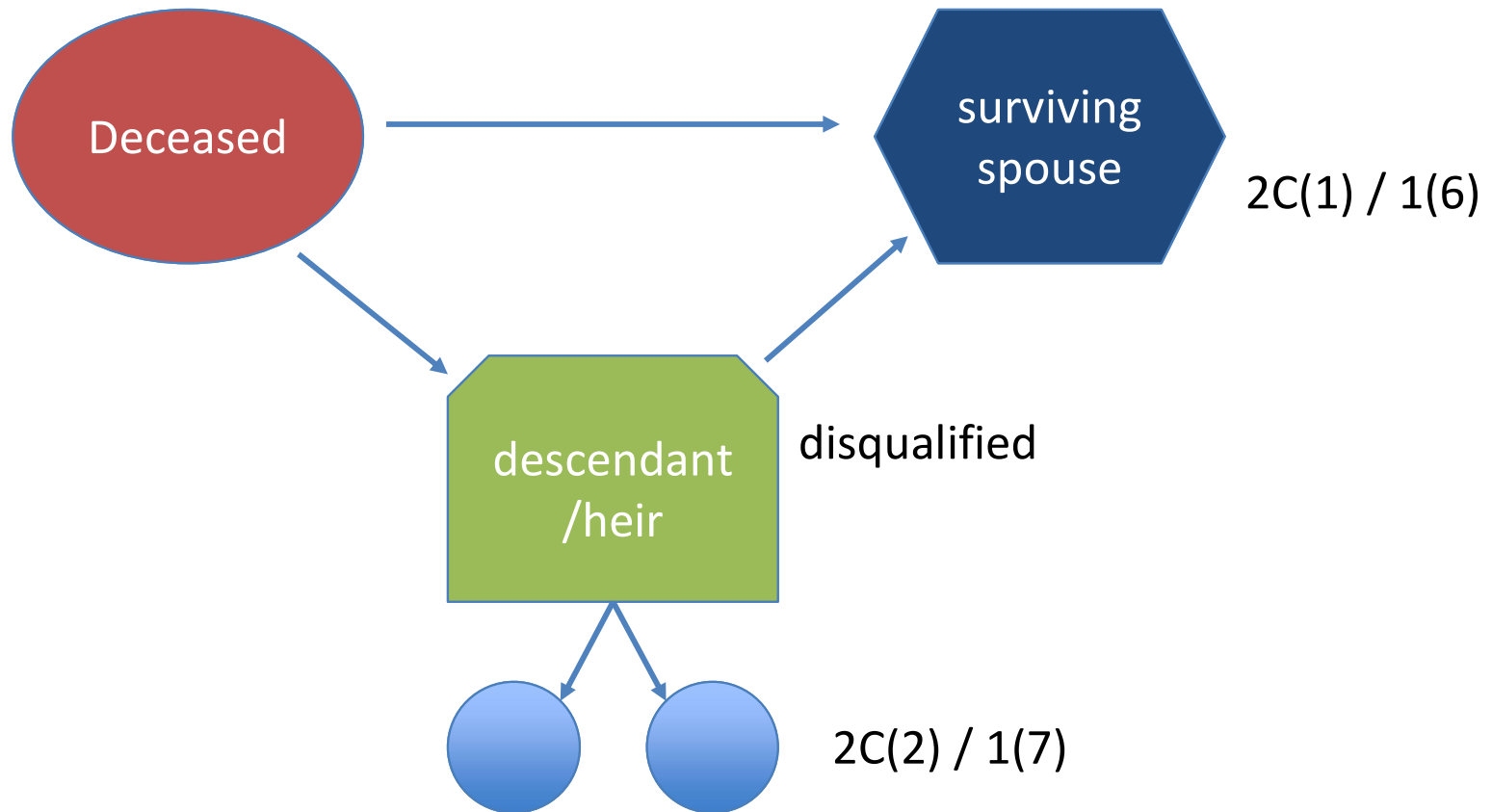


- may not inherit (take advantage of estate) from deceased or close family (parents, spouse, children)
- intentionally (assisted / instructed)
- negligent conduct included *Casey v The Master* 1992 (N)
 - not self-defense, mentally ill, negligent driving...
- any reprehensible and morally blameworthy conduct
- not allowed inheritance, legacy, donation mortis cause or “any other benefit...” (legal costs, guardian...)

How?

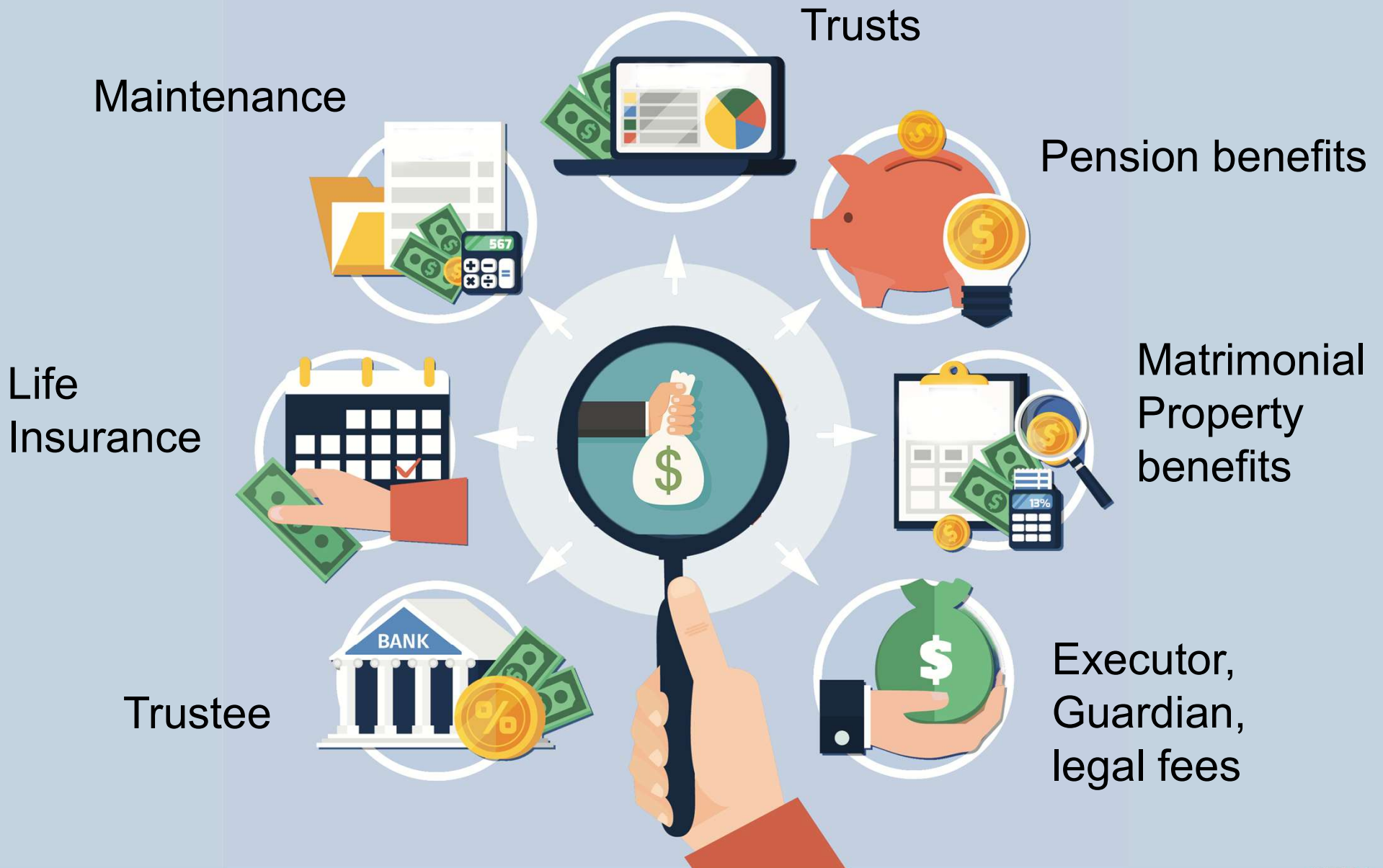
- Maybe an automatic rule, but not automatically applied?
- The Master or executor does not have the power (ito legislation) to determine a person's unworthiness to inherit...
 - (a guilty conviction in criminal court is not necessary – offence – beyond reasonable doubt) *Hollington v Hewthorn* [1943]
 - a court order may be needed to disqualify a beneficiary from inheriting from an estate (civil trial – wrongful act – on balance of probabilities, onus on person alleging disqualification)
 - however no legislative requirement
 - onus on executor to apply (get declaratory order on unworthiness)
 - opinion: executor should have power to exclude beneficiary > fiduciary duty toward deceased (court order only in case of uncertainty)
 - the aggrieved beneficiary > lodge objection with Master / court.
 - not mere suspicion (*NM v ZM* [2023] ZAGPJHC)





Testate 2C(2) / Intestate 1(7): if there is no surviving spouse, and the descendant renounces his benefit / was disqualified- it would be as if he was deceased and his descendants would inherit his portion per stirpes. (depending on provisions in will...)

“... or any other benefit”



Pension benefits

- *Makhanya v Minister of Finance* 2001 (2) SA 1251 (D)
- public policy to extend rule to pension benefits
- disqualifies person who caused death of deceased
- payable to estate / other regulations



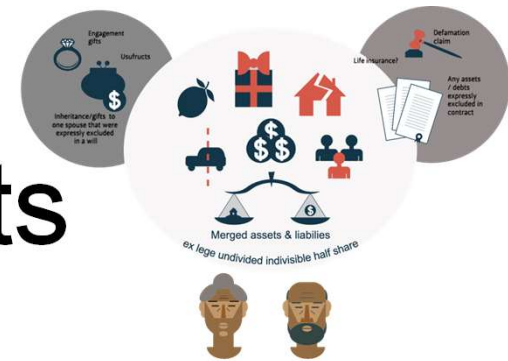
Life Insurance

- named beneficiary
- estate (marriage)

- *Danielz v De Wet* 2009 (6) SA 42 (C) (named beneficiary, married in COP)
 - declaratory order to deny wife life insurance
 - even just vicious assault, that later caused death, even if unforeseen, cannot be benefitted by insurance (public policy)
 - (still issue if policies formed part of joint estate, half share excluding policies)
- *Maqubela v The Master* 2022 (6) SA 408 (GJ)
 - to estate; in COP



Matrimonial Property Benefits



- Married in COP: half share based on marital regime, not “inheritance”.
 - *Casey v The Master* 1992 (4) SA 505 (N);
 - still has right to half share
 - *Leeb v Leeb* 1999 2 All SA 588 (N):
 - court has the power to order that murderous spouse forfeits the benefits of the marriage in COP.
 - *Maqubela v The Master* 2022 (6) SA 408 (GJ)
 - half share of joint estate, but excluding insurance
- Married out COP with accrual
 - MPA sec 9: could have forfeited accrual on divorce...
 - SALC (1991): expedited dissolution but always had right to accrual
 - Leeb (1999) N: court can declare forfeiture of accrual on death

Maintenance

- *In re Visser* 1948 (C)
 - each case decided on own merits
 - nature of maintenance required,
 - can estate afford maintenance
- *Casey v The Master* 1992 (N)
 - can disqualify to receive maintenance
- *Smit v The Master* 2022 (WCC) (forged will & death)
 - no maintenance granted, bloody hand should not take any benefit
- Arguments against: Maintenance is not enrichment, arises *ex lege* before and after death, public policy even maintains prisoners, still duty to maintain



Interim maintenance

- spouse and children entitled to claim interim maintenance
- what if in process of being accused on crime/fraud?
- executor higher standard of care in such a case
- Sec 26(1A) AEA: executor may, *with consent of Master*, disburse an amount prior to inspection period of L&D.



Inter Vivos Trust?

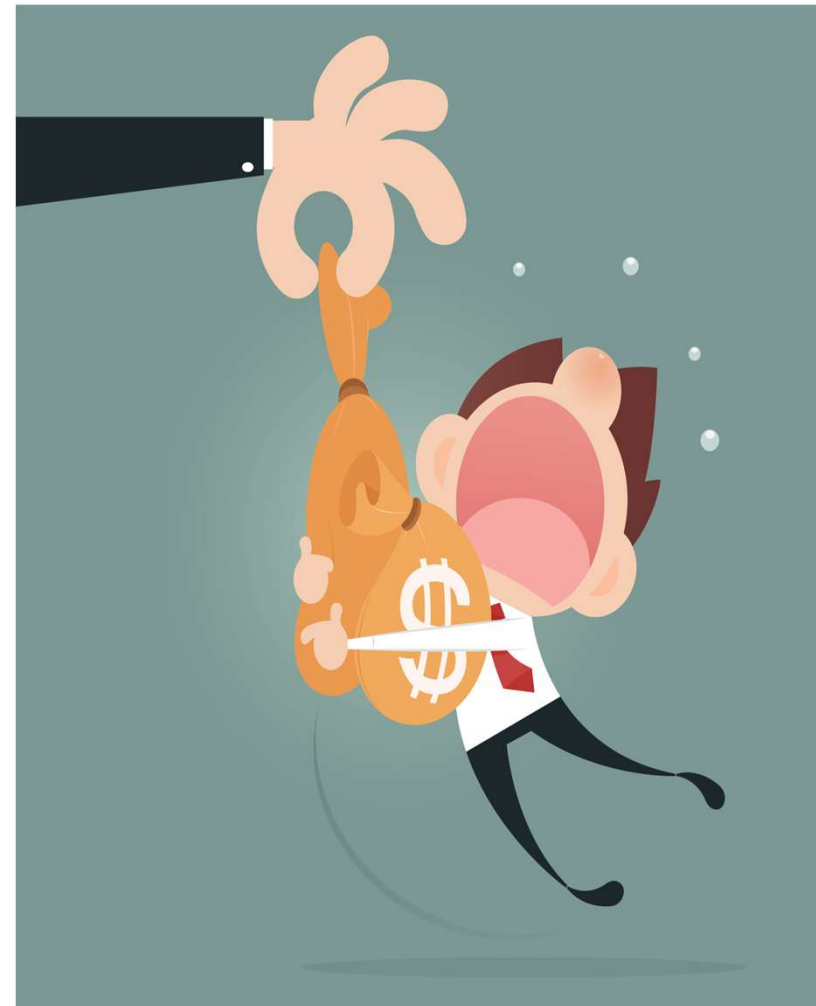
- killer disqualified as *trustee* (Smit); beneficiary?
- not the personal assets of deceased (separation of ownership)
- during lifetime already beneficiary
- fiduciary duty of trustees (towards beneficiary)

- Is there a discretion to apply unworthiness?
- Master's duty?
- Forfeiture of beneficiary rights; public policy



Unworthiness to benefit in *life* (divorce)

- ex-spouse unworthy to inherit if testator died within 3 months of divorce. (sec 2B)
- Forfeiture of benefits (became entitled to because of marriage)
 - Sec 9(1) of Divorce Act
 - applicable to in COP and out COP with accrual
 - Cannot forfeit what was brought into marriage
 - court has *discretion* to order forfeiture if one spouse would be '**unduly benefitted**' in absence of such an order
 - consider the duration of marriage, circumstances for break-down and substantial misconduct (not cumulatively) (*Mashola v Mashola* [2023] ZASCA 75)
 - *JW v SW* 2011 (GNP): domestic violence = substantial misconduct
- Benefits: accrual claim, donation in contract/ANC, pension.



Forfeiture of benefits (divorce)

- achieving fairness & justice in property distribution
- “Misconduct and gross unreasonableness does not always go hand in hand” (*Engelbrecht* 1989 (C))
- *W.M.C.M v U.A.M* (7390/2018) [2026] ZAGPPHC 5 (IN COP)
 - vicious assault on wife by husband (had interim protection orders)
 - wife was sole provider, court granted her the forfeiture order.
- *VG v TM* [2024] ZAEC
 - allegations of “not providing enough financially”, not sufficient.
- *Z v Z* (34253/2010) [2023] ZAGPJHC
 - “treating wife with disrespect and kids with disdain, no financial contribution to joint estate”
 - based on length of marriage and lack of financial contribution, partial forfeiture of pension interest awarded.



Thank You



T: +27 51 401 2823 | E: vanzylr2@ufs.ac.za | www.ufs.ac.za
Utilising your official institutional email address and phone number is optional

*Inspiring excellence, transforming lives
through quality, impact, and care.*



UNIVERSITY OF THE
FREE STATE
UNIVERSITEIT VAN DIE
VRYSTAAT
YUNIVESITHI YA
FREISTATA