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WHAT ARE THE LEGAL CONSEQUENCES OF MARRIAGES CONCLUDED OUTSIDE OF SOUTH AFRICA?

A marriage's formal validity is governed by the law of the place where the marriage is concluded. This, however, does not imply that the legal consequences of such a marriage is governed by the legislation of the country in which the marriage was concluded.

In terms of South African law, more specifically the Matrimonial Property Act 88 of 1984, a marriage is considered to be in community of property if the husband is resident (domiciled) in South Africa at the time of the marriage's conclusion and no valid antenuptial agreement has been entered into. In cases where a marriage is concluded outside of the parties' respective domiciles, the law of the husband's domicile will apply (see *Frankel's Estate and Another v The Master and Another* (1950) ALL SA 347).

According to *Holland v Holland* 1973 (1) SA 897 T, a person's domicile is the specific jurisdiction area or country in which they currently reside or plan to remain permanently. Domicile is a subjective test based on the parties' intentions. However, in accordance with South African common law, specifically the Frankel case mentioned above, the judge stated the following regarding domicile:

"The conclusion at which I arrive is that the matrimonial regime is governed by the law of the husband's domicile at the time of the marriage, and that it is not governed by the law of another domicile which he then intends to acquire immediately or within a reasonable time after his marriage."

Nothing prevents spouses to a civil marriage—where the husband resides in another country — from concluding an antenuptial contract that governs the outcomes of their union and facilitates its registration in South Africa (see *Johnson and Others v Registrar of Deeds* 1931 CPD 228 and RCR 64 of 1961). This does not, however, lead to the marriage being one where there is no community of property. The parties still need to be defined as:

"Married which marriage is governed by the laws of (name the country)"