UNIVERSITY OF JOHANNESBURG
LEGAL SKILLS
2019
Introduction

NUMERACY

Kok, Nienaber & Viljoen *Skills workbook for law students* 2nd ed Juta 2011, Ch 2 (p.22 - 52)

UNIVERSITY OF JOHANNESBURG

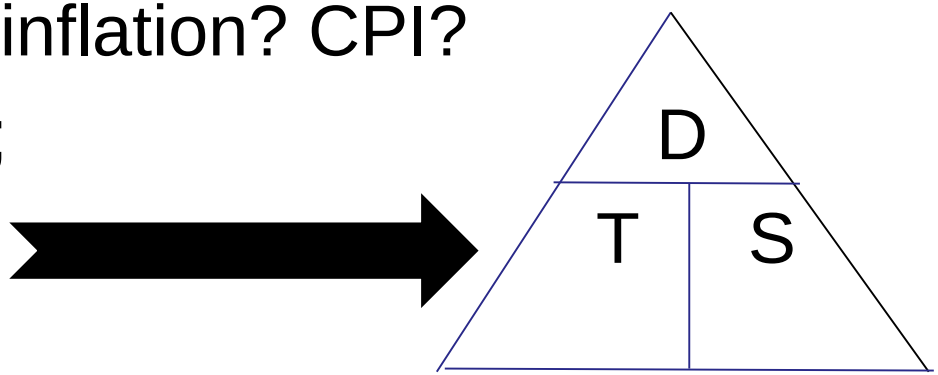
2019

DISCLAIMER

Please note that these slides may contain "mistakes" that have been inserted deliberately for purposes of discussion and training in a lecture situation.

Why Numeracy?

- Manage client's money;
- Attorney's trust account;
- Practice is a business;
- All parts of the law require calculations in some respect;
- Tax;
- Wills; fee: **Regulation 7** and amounts to a maximum of 3,5% of the gross value of the assets;
- Labour law – inflation? CPI?
- Business law;
- Criminal law



UNITS

- **B HM M HTh TTh T H T U,** **Decimals**

  (Less than 1)

  Milliard “Integer”

= Thousand Million (or the Whole number)

  (Billion?)

- 1 year = days?
- 1 leap year = days?
- 1 year = weeks?
- 1 year = months?
- 1 week = days?
- 1 day = hours?
- 1 hour = minutes?
- 1 minute = seconds?
- 1 decade = years?
- 1 century = years?
- 1 millenium = years?

YOUR BASIC APPROACH WHEN WRITING:

- Separate figures in groups of three:
- 85 234 561,00
- Decimals after a comma
- Line your numbers up:

	TTh	T	H	T	U
			14	567	,12
+				321	,15
=	?	?	?	?	

- Symbols

  > < = ≤ ≥ ≠ ≈

NUMERACY SKILLS

- Addition

  5 + 20 = [“the sum of”]

ADDITION

- Separate figures in groups of three:
- 85 234 561,00
- Decimals after a comma
- Line your numbers up:

	TTh T	H T U
	14	567,12
+		321,15
=	14	888,27

14 567,12
+ 323,19
= 14 890,31 = the sum of the above

SUBTRACTION

- Subtraction ["the difference between"]

  20 – 5 = ?

  5 – 20 = ?

$$\begin{array}{rr} & 14\,567{,}12 \\ - & \underline{\quad\;\; 321{,}19} \\ = & 14\,245{,}93 \end{array}$$

DIVISION

14 565,00

÷ 5

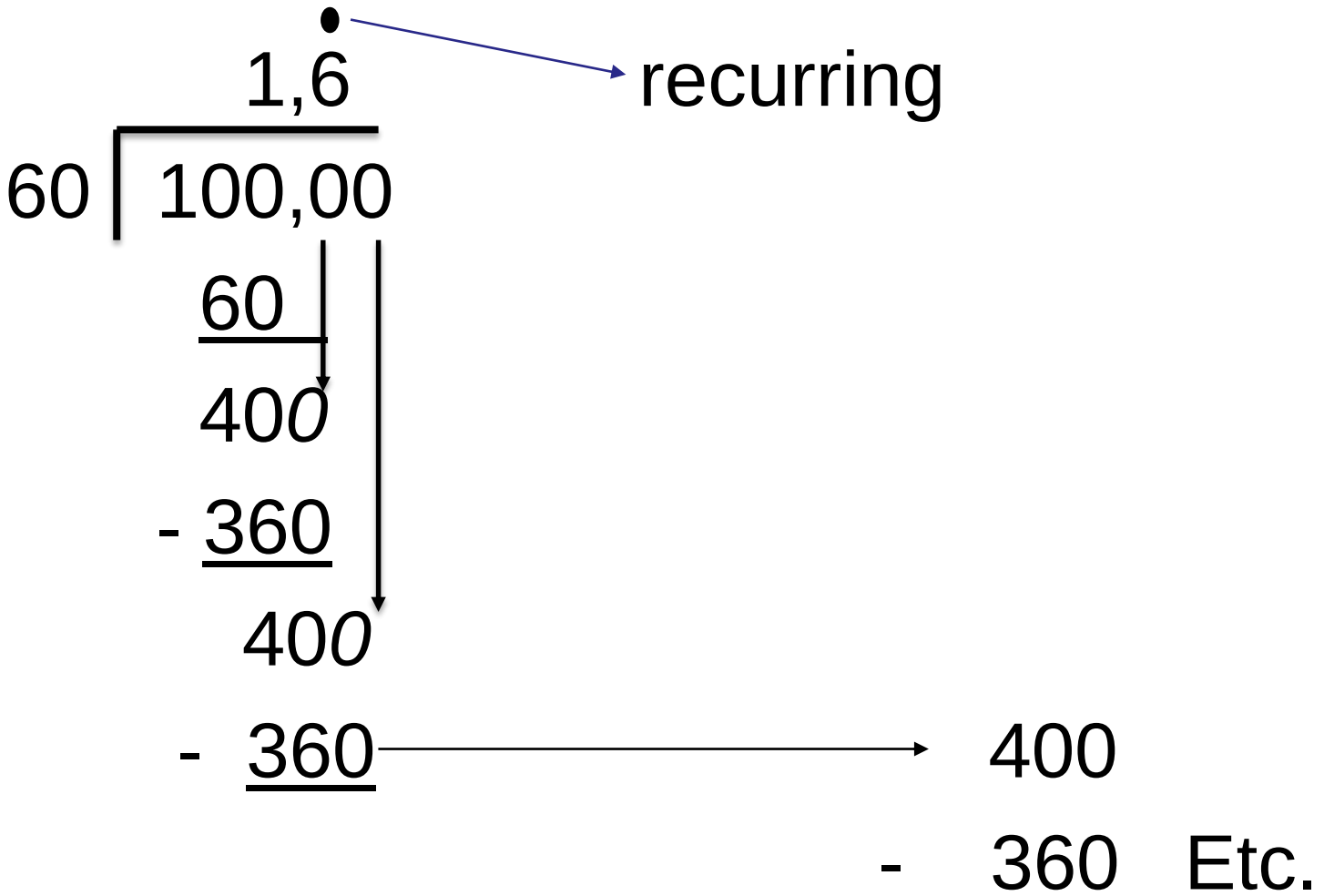
= ?

NUMERACY SKILLS

- **<u>Division</u>**
- **You paid :**
- R 100,00 for 60 pages copied?

- divide 60 into 100 = by long division

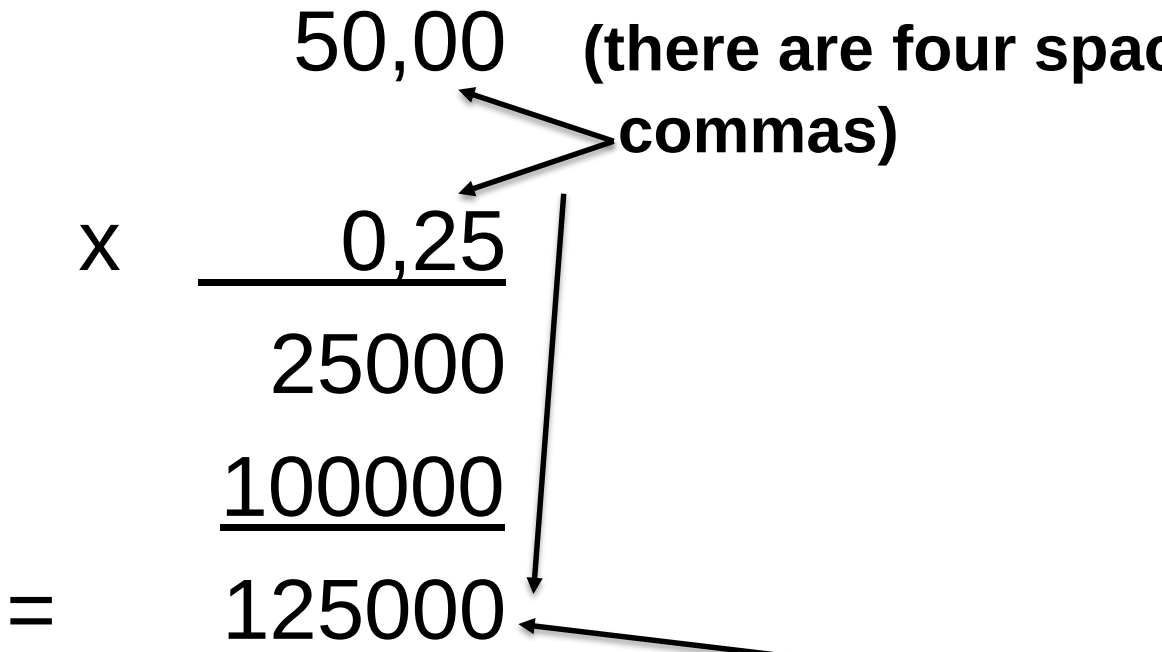
Division R 100,00 for 60 pages copied
= divide 60 into 100



NUMERACY SKILLS

- **<u>Multiplication</u>** 50 x 25 cents = ?

  50 x R 0,25 = ["the product of"]



NUMERACY SKILLS

Calculators

Arithmetic logic / ("Sequential" logic)

Calculate in the order you enter them.

You have to think for the calculator!

1 + 2 x 3 = ?

NUMERACY SKILLS

Calculators

Algebraic logic (This is equal to "bodmas")

Your calculator will follow the following sequence:

1. First: Calculations that you put in **brackets**;
2. Second: **'OF' – to the power OF =** exponents**, and: a part OF=** fractions
3. Third: Multiplications and divisions;

(Of equal importance, so you do it **left to right)**

4. Fourth: Additions and subtractions.

(Of equal importance, so you do it **left to right**)

1 + 2 x 3 = ?

BODMAS

- **The way schoolchildren are taught to do their sequence of calculations – you too!**
- **B = brackets**
- **O = “of”: to the power “of” = exponents**
  =“of” part “of” = fractions
- **D = division** } **equally important**
- **M = multiplication** } **do left to right**
- **A = addition** } **equally important**
- **S = subtraction** } **do left to right**

NUMERACY SKILLS

- $2^3 + 12 - 7/10 + (2 \times 3) = ?$
- $6 / 7 + \frac{3}{4} + 1 \times 3 = ?$

Factors

- A factor is a number that divides directly into a given number
- What are the factors of 20?
- A Prime number only has 2 factors: itself and another number.

NUMERACY SKILLS

- **Averages** = addition and division

  10 000 + 5 000 + 20 000 + 16 000 + 15 000

  = 78 000 ÷ 6 = R 13 000

  Are you happy with this?

NUMERACY SKILLS

- **<u>Averages</u>** = addition and division

  Remember to use brackets if your calculator uses algebraic logic.

  (**)**

10 000 + 5 000 + 20 000 + 16 000 + 15 000

= 66 000 ÷ 5 = R 13 200

Happy now?

IS THIS CORRECT?

You must check all calculations yourself!

NUMERACY SKILLS

- **Exponents**

- $\mathbf{5^3} = 5 \times 5 \times 5$

  $= 125$

Rounding off:

- if the decimal is less than 5 discard it;
- if the decimal is 5 or more, increase previous decimal by 1;
- general rule: look at the 3rd decimal after the comma and round up to the second decimal;

  0,0546 ⟶ 0.05 0,0345678 ⟶ ?

  0,0566 ⟶ 0,06

- Only do this at the <u>end</u> result – not dúring the sum.
- <u>Keep</u> all decimals during the calculation.

Percentages:

$$\frac{8}{10}$$

= 0.8 (decimal)

and = 80%

- 60% of 60?:
- =36

Fractions & Equivalent fractions

$$\frac{3}{5} = \frac{6}{10}$$

Numerator

Denominator

[Find the LCD].

The denominator must be the same to be able to do calculations with fractions.

$$\frac{4}{7} + \frac{3}{9} = \frac{4x9}{7x9} + \frac{3x7}{9x7}$$

$$\frac{36}{63} + \frac{21}{63} = \frac{57}{63}$$

= 0.9047618 = 0.91

or is it?

Fractions & Equivalent fractions

$$\frac{1}{4} + \frac{3}{8} + \frac{12}{125}$$

Try dividing the smallest numbers into the largest number. The answer can't have a decimal. Doesn't work here.

Try to find a number into which all there denominators can divide.

= ?

Fractions & Equivalent fractions

$$\frac{1}{4} + \frac{3}{8} + \frac{12}{125}$$

LCD=1000

= 1000 ÷ 4 = 250

= 1000 ÷ 8 = 125

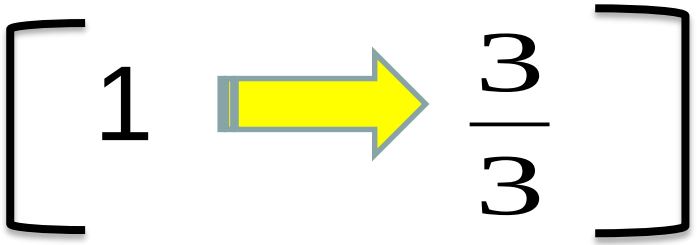
= 1000 ÷ 125 = 8

$$\left(\frac{1}{4} \times \frac{250}{250}\right) + \left(\frac{3}{8} \times \frac{125}{125}\right) + \left(\frac{12}{125} \times \frac{8}{8}\right)$$

=?

NUMERACY SKILLS

- **Multiplying fractions**
- **First convert whole figures to fractions**
- $1\frac{2}{3} + \frac{4}{3} = \frac{9}{3} = 3$



- **Reading decimal fractions**
- **0.333333 = recurring decimal = 0.3**

NUMERACY SKILLS

- **Converting percentages to fractions**
- $38\% = \frac{38}{100}$
- **Converting fractions to percentages**

$$\frac{15}{25} = 0{,}6 \text{ (decimal) x } 100 = 60\%$$

NUMERACY SKILLS

- Which fraction is the largest:

$$\frac{2}{7} \text{ or } \frac{11}{12} \text{ or } \frac{13}{28}$$

Percentage

- Always remember to give the actual answer that you are looking for!
- Joe Soap dies and in **his will** he leaves:
- R20 000 to his wife
- R32 000 to the pastor
- R12 000 to his eldest son
- What percentage did he leave to each?

Percentages

- The full estate is worth:

- R20 000 + R32 000 + R12 000 = R64 000
- **R64 000 = 100%**
- Wife gets $\frac{\mathbf{20\ 000}}{\mathbf{64\ 000}}$ = 0.3125 x 100 = 31,25%
- Pastor gets?
- Son gets?

Ratios and Rates

- R 154 087,95 to be divided in ratio 1:2:3
- To find the value of 1 part:
- add the ratio parts: 1 + 2 + 3 = 6 parts to be divided.
- 1 part is therefore $\frac{1}{6}$th = 0,1666666

- 1 = R 25 681,325 ***[R 25 681,33]***
- 2 = R 51 362,65
- 3 = R 77 043,975 ***[R 77 043,98]***

Interest: Simple Interest

- Fee charged as interest is a fixed amount of the capital.
- R 5 000 @ 12% simple interest per year
- To be charged monthly
- 12% = $\frac{\mathbf{12}}{\mathbf{100}}$ = 0,12 (decimal value of the percentage)
- First calculate it over a full year = 12 months
- R 5 000 x $\frac{\mathbf{12}}{\mathbf{100}}$ = R 600.
- Or add 1 **to the decimal value = 1 + 0,12 = 1,12**
- 1,12 x R 5 000 = R 5 600 = What is this exactly?

Interest: Simple Interest

- and 1 month = $\frac{1}{12}$ = $0.08\dot{3}$ of a year.
- 0.0833333333 x R 600 = R 50 interest for a month.
- And for 5 months?

Compound Interest

- Fee charged as interest is **added** to the capital after each period. "Interest on interest".
- **You can do it the looooongg way…**
- R 5 000 x 12% = R 600 + R 5 000

  = R 5 600 -1st year
- R 5 600 x 12% = R 672 + R 5 600

  = R 6 272 -2nd year
- R 6 272 x 12% = R 752,64 + R 6 272

  = R 7 024,64 -3nd year

Final amount repayable – 3rd year R 7 024,64

Compound Interest

- R 5 000 @ 12% compound interest per year
- In advance? In arrears?
- Convert 12% to a decimal fraction: 0,12 add 1 = 1,12
- Multiply with itself for each year: **Say 3 years:**
- **1,12 x 1,12 x 1,12** = **1,404928**
- Multiply with original amount:

  x **5 000,000000**
- Total Capital + Interest after 3 years: **= 7 024,64**

$$A = P\left(1 + \frac{r}{n}\right)^{n(t)}$$

Compound Interest Formula

P = principal amount (the initial amount you borrow or deposit)

r = annual rate of interest (as a decimal)

t = number of years the amount is deposited or borrowed for.

A = amount of money accumulated after **n** years, including interest.

n = number of times the interest is compounded per year

(i.e. if compounded each month n would be 12)

Compound interest formula

- R 5 000 is invested @ 12% p/a compounded quarterly. How much is it worth after three years?
- P = 5000 r = 12÷100 n = 4 t = 3 years
- **A = 5000(1+ $\frac{0.12}{4}$) 4(3)**
- Use the formula = R 7 128,8044434
- **=R 7 128,80**

- **<u>If you only have to compound annually (after each year):</u>**
- **R5 000@12% compounded annually over 3 years?**
- **$A = P(1+i)^n$ $A = 5\,000(1+0.12)^3$**
- P = amount invested
- i = interest expressed as a decimal fraction
- n= duration of investment (in years)
- =R 7 024,64

- $\mathbf{FV = PV\left(1 + \frac{I}{Y}\right)^{n}}$ $\mathbf{= 5000\left(1 + \frac{.12}{1}\right)^{3}}$

- FV = Future Value
- PV= Present Value
- I = percentage interest (1 to 100) expressed as a decimal figure
- Y= period after which percentage must be calculated (365 days or 12 months or 1 year)
- n = number of periods compounded for

- R5 000 @ 12 % compounded monthly in arrears for 5 months is?
- FV = PV $(1+\frac{\mathbf{I}}{\mathbf{Y}})^{n}$
- FV = 5000 $(1+\frac{\mathbf{0.12}}{\mathbf{12}})^{\mathbf{5}}$
- FV = 5000 $(1+ 0.01)^{\mathbf{5}}$
- FV = 5000 $(1.01)^{\mathbf{5}}$
- FV = 5000 (1.05101005)
- FV = 5255,050251 = R 5 255,05

NUMERACY SKILLS – VAT in RSA= 15% From 1 April 2018

- **VAT**
- **If it is already included in the amount / price**

- **R 100,00 ("inclusive") =**
- **R 100,00 x $\frac{15}{115}$ = 13,04 [the amount of VAT]**

- **How much is the Capital then?**

NUMERACY SKILLS – VAT in RSA= 15% From 1 April 2018

- **VAT**
- **R 100,00 (“exclusive”) =**
- **R 100,00 x $\frac{15}{100}$ = 15,00 [the amount of VAT]**
- **[= the VAT that has to be added to the capital].**
- **OR**
- **R 100,00 x $\frac{115}{100}$ = 115,00 [= the complete total of the capital amount plus the VAT].**

NUMERACY SKILLS

- **<u>What if you only know that tax had already be subtracted say 25%?</u>**
- **I received R 10 237,50 nett.**
- **The Law Society of South Africa (“LSSA”) says they subtracted 25% tax already.**
- **What was the gross remuneration before the tax had been subtracted?**

NUMERACY SKILLS

- **<u>What if you only know that tax had already be subtracted say 25%?</u>**

- R 10 237,50 = therefore = 75% of the gross payment
- The gross payment is therefore 100%
- R 10 237,50 x $\frac{100}{75}$ = R 13 650,00.
  - Add the 25% to the known 75% as the numerator.

NUMERACY SKILLS

- You buy a pair of shoes that is offered at a 15% discount. The original price was R600. What is the discount price?

NUMERACY SKILLS

- 24 500/1 x 8/100 x 11/12 = ?

- If you borrow R 8 450 at an interest rate of 8% compounded annually, how much will you owe after 3 years?

NUMERACY SKILLS

- How many women have seats in a parliament of 120 representatives if the ratio of men to women is 5:1?

NUMERACY SKILLS

- Total men and women = 120
- Total ratio 5 + 1 = 6
- 1÷ 6 = 0,16 x 120

  = 20 Women

Substitutions into Formulae

- Give each constant aspect a name
- “Cellphone Costs” = “C”
- “Time” = “T”
- If the Unit cost is fixed, that number must be used i.e. R3,00 per minute = “3”

- Parts of “T” (fractions/ decimals) must be expressed in minutes

NUMERACY SKILLS

- If a toy costs R645 VAT inclusive, and VAT is charged at 45%, what would it cost, VAT exclusive?

MATRIMONIAL LAW - Divorce

- Married: 1 July 1993 with Accrual (ANC)
- ANC – Starting values in 1993
- Wife: R 100 000; Husband: R 250 000
- 2 x Children: Daughter 3 yrs old; Son 7 yrs old
- Wife did not work since birth of eldest child
- Value now: Wife R 200 000: Husband R1,5m
- CPI: ½
- Calculate the Accrual.

NUMERACY

MATRIMONIAL LAW

Matrimonial property systems:
MATRIMONIAL PROPERTY ACT No. 88 OF 1984

- Financial (patrimonial) consequences of either concluding or dissolving a marriage.
- *Only death or divorce dissolves a marriage.*
- Variable consequences of marriage.
- Spouse must choose between the available options before the wedding.
- 3 available matrimonial property systems.

- **<u>Choices of matrimonial property regime</u>**:-
  - in community of property;
  - out of community of property **without** the accrual system; or
  - out of community of property **with the inclusion** of the accrual system.

Marriages in community of property: MATRIMONIAL PROPERTY ACT No. 88 OF 1984 – Definition & Chapter III

- **In community of property means:**
- That there is a joint estate.
- *The spouses did not enter into an ante-nuptial ["pre-wedding"] contract (usually referred to as an "ANC") signed in front of a notary before the wedding. (They just married for Luuuve…)*

- **Consequences:**
  - All the assets and liabilities
  - of both spouses
  - before and after the marriage
  - form part of this joint estate
  - and they do not have separate estates.

Marriages in community of property

- **<u>Assets which are excluded are</u>:**

***** assets excluded in terms of an ante-nuptial contract – *but there probably will not be such a contract because then they would probably have chosen to be married out of community of property*;

* assets that are excluded by means of a will of someone else who left something to one of the spouse in that will;

* non-patrimonial damages (satisfaction, also called “general damages”) received by one of the spouses. (For pain and suffering, defamation etc.)

Marriages in community of property

- Spouses have equal control over this estate:
- each can go without the other and buy something (make debt!).
- But both spouses (partners in this marriage) are liable for the debts.
- If the spouse who made the debt doesn't pay, the other partner can also be sued for the full debt.
- Each spouse owns an undivided ½ of the joint estate.
- One estate – both partners share prosperity and financial misfortune.

Marriages in community of property

- Marriage is dissolved through death or divorce.

- **<u>Winding up of the joint estate</u>:**
- Payment of all debts and the recovery of all the monies due to the estate.

❖When this process is started, the surviving spouse first receives half of the net value of the joint estate.
❖The other half of the joint estate is then divided according to the will of the deceased spouse, or if there is no will, in accordance with the Intestate Succession Act.

Marriages in community of property: *Example question:*

John and Elsie were married in community of property.
Elsie died on 9 September 2008. There are no children.
Joint estate had the following assets and liabilities:
→ a property worth R689 000;
→ they still owed R381 697 on the mortgage registered over the property;
→ a motor vehicle worth R281 432;
→ jewelry worth R38 200, which Elsie inherited from her mother, who excluded it as part of the joint estate;
→ furniture that is worth R126 542;
→ a loan in terms of which they still owe R52 410;
→ R50 000 that John specifically excluded from the joint estate in terms an ante-nuptial contract.
▸**Calculate the amount that John will receive in terms of their marriage in community of property**.

In community of property: *Example question: Solution*

Calculate the net value of the joint estate. Deduct the liabilities from the assets.

The sum of the assets:

the property worth R689 000,
motor vehicle worth R281 432, and
furniture worth R126 542
} = R 1 096 974.

(The jewelry worth R38 200 and the R50 000 specifically excluded in the ante-nuptial contract are excluded.)

The sum of the liabilities:

the mortgage worth R381 697,
the loan worth R52 410 which equals
} = R 434 107.

The net value: assets less liabilities = R 662 867.

John, the surviving spouse, is entitled to ½ of the net value of the **joint estate**: **= R 331 433,50.**

Marriages out of community of property <u>excluding</u> the accrual system

Spouses retain their own separate estates which consists of all assets and debts before and after the marriage.

Each spouse has total control over his/her separate estate. There is no risk of sharing financial losses but spouses also do not share in each other's financial gain.

Marriages out of community of property
<u>including</u> the accrual system
MATRIMONIAL PROPERTY ACT, 88 of 1984 Chapter I

Termination of marriage: death or divorce.
Spouse with the smaller accrual shares in the accrual of the other spouse.
"accrual" means how much the net value of the estate at dissolution exceeds the net value at the conclusion of the marriage.

Advantages:
- ❑Spouses can share in each other's financial gain.
- ❑Bear NO risk of each other's financial failure during the marriage.
- ❑No accrual sharing if a spouse goes bankrupt.

Marriages out of community of property including the accrual system

At termination of the marriage:
Spouse with no accrual or a smaller accrual than the estate of the other spouse acquires a claim against the other spouse for an amount equal to ½ of the difference between the accrual of the respective estates of the spouses.

The calculation consists of four steps:

- ❑Determine the net commencement value of the respective estates,
- ❑Determine the net end value of the respective estates,
- ❑Determine the accrual of each spouse's estate,
- ❑Calculate the accrual claim.

Marriages out of community of property including the accrual system

Nett commencement value:
Difference of the monetary value of the assets of the spouse at the commencement of the marriage and the liabilities of such spouse.

This **initial value** of the estate must be calculated with due allowance for inflation from the commencement of the marriage up to the dissolution of the marriage. Therefore, you have to take into account the inflation rate, which is the weighted average of the **consumer price index ("CPI")** as published in the Government Gazette.

Marriages out of community of property including the accrual system

Net end value of the respective estates at the dissolution of the marriage, is the difference between the assets at the time of the dissolution and the liabilities at such time.

However, certain categories of **assets are excluded** from the calculation of accrual namely:

→ non-patrimonial loss received by one spouse during the marriage;
→ an inheritance or a donation received during the marriage;
→ an asset which has been excluded by a spouse in terms of the ante-nuptial contract.

Marriages out of community of property including the accrual system

Accrual of the respective estates of the spouses is determined by subtracting the net commencement value of the estates from the net end value.

The spouse with the smaller accrual has a claim against the estate of the other spouse for half the difference between the accruals of the respective estates.

Marriages out of community of property including the accrual system: Example

X and Y married: December 2000.
Prior to the marriage they entered into a valid ante-nuptial contract whereby they excluded community of property and included the accrual.

At the time of entering into the marriage X has two assets namely a CD player worth R5 000 and a motor vehicle worth R50 000. He owes R20 000 to his brother. Y has furniture worth R20 000.
In 2005 Y dies in a motor vehicle accident. Her deceased estate consists of the following three items: a house worth R300 000, a motor vehicle worth R40 000 and an antique ring worth R20 000 that she inherited from her grandmother in 2003. At the time of Y's death, X has a net estate of R700 000 which consists of the following items: a rare wine collection worth R20 000 that he received as a donation from Y, R50 000 he received for damages to his car (patrimonial loss) and R30 000 he received from a successful libel action against the local newspaper (non-patrimonial loss). The rate of inflation according to the weighted average of the Consumer Price Index is 1:2. Calculate the possible accrual claim that arises from these facts.

Marriages out of community of property including the accrual system: Example: Solution

X's estate:

net commencement value: R55 000 (assets) less R20 000 (the liabilities) = R35 000. (Remember to adjust the amount to account for inflation. According to the **Consumer Price Index** money was worth twice as much at commencement of the marriage as it is at the time of the divorce. Therefore, the amount must be multiplied by 2.)

R35 000 x 2 = R70 000.

net end value: Assets R700 000 less the excluded assets namely the donation of R20 000 and the R30 000 for non-patrimonial damages. = R650 000.

X's accrual: R650 000 – R70 000 = R580 000

Marriages out of community of property including the accrual system: Example: Solution

Y's estate: **net commencement value:** is the difference of the assets at the commencement of the marriage and the liabilities. Y only has one asset namely the furniture worth R20 000 less R0 (the liabilities). This equals R20 000. (Remember to adjust the amount to account for inflation. According to the Consumer Price Index money was worth twice as much at the commencement of the marriage as it is at the time of the divorce. Therefore, the amount must be multiplied by 2.) R20 000 x 2 = R40 000.

Net end value: is the assets at the time of the dissolution less the excluded items. Her assets is R360 000 less the excluded asset namely the inheritance of R20 000.

This amounts to R340 000.

Y's accrual: R340 000 – R40 000 = R300 000

Marriages out of community of property including the accrual system: Example: Solution

Net end value is the assets at the time of the dissolution less the excluded items. Her assets is R360 000 less the excluded asset namely the inheritance of R20 000.
Y's accrual: R340 000 – R40 000 = R300 000
Y had the smaller accrual, so she has a claim against the estate of X for an amount equal to half the difference between the accruals of the respective estates.

½ of R580 000 (X's accrual) – R300 000 (Y's accrual)
= ½ x R280 000 = R140 000.

Y has a claim for R140 000.

NUMERACY

INTESTATE SUCCESSION

INTESTATE SUCCESSION: Introduction

Death – An estate is left
The heirs inherit.

- **Testate.** (Will or testament) – Deceased estate goes to heirs per wishes of the testator / testatrix.
- **Intestate**. (No will or testament) - Intestate Succession Act 81 of 1987 is applied.

SPOUSE AND NO DESCENDANTS
Spouse inherits everything.

INTESTATE SUCCESSION: DESCENDANTS – NO SPOUSE

- Descendants inherit the entire estate.
- Division takes place ***per stirpes*** **("by branch")** and **representation** are allowed.
- Each branch of the family must receive an equal share of an estate.
- The estate is divided equally between the children, those children that are alive as well as those children that are deceased **who have living descendants**.
- If there had been a child that died, leaving no descendants him/herself, **that "branch" ended** is not counted, and it inherits nothing.
- The living descendants of a deceased child however, will inherit his/her portion through representation.

INTESTATE SUCCESSION: DESCENDANTS – NO SPOUSE

Example question:

Susan and Peter were married. **They got divorced.** 3 children were born from the marriage namely John, Amanda and Emily. ***(Because Susan and Peter were divorced - he is not her spouse anymore, and he inherits nothing intestate.)***

Susan died intestate. She is survived by John, Amanda and two grandchildren, Kaylin and Jack, children of the pre-deceased child, Emily. At the time of her death, her estate has a net value of R243 936.

- Calculate the amount that John, Amanda, Kaylin and Jack will inherit respectively.

INTESTATE SUCCESSION: DESCENDANTS – NO SPOUSE

Example question: Solution

The descendants (children) inherit the entire intestate estate.
Division *per stirpes* - representation allowed.
The amount will be divided by 3 (children of deceased).
R243 936 ÷ 3 = R81 312.
John & Amanda (still alive) each receives R81 312.
Emily is pre-deceased, R81 312 divided equally between Kaylin and Jack who represents Emily.
Each receives an R40 656.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Intestate Succession Act, 81 of 1987 - S1(1)(c)(i)
A surviving spouse inherits a **child's portion OR**
so much of the ***intestate estate*** as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Government Gazette,
whichever is the greater.
GG 38238 25 November 2014 = **[Was 125 000 before]: increased to R 250 000.**

A child's portion:= number of *stirps* (= number of children of the deceased that survived him
or have died before him but are survived by descendants), **plus one for the Spouse, of course.**

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Marriages in community of property (hereinafter referred to as "COP")

- Surviving spouse is entitled to ½ of joint estate.
- **Other half** will then fall into the deceased's estate.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Marriages in COP

Example question

Susan and Peter were married in COP: 20 years.
3 children John, Amanda and Emily.
Susan dies intestate on 20 June 2012.
Survived by Peter, John, Amanda and two grandchildren, Kaylin and Jack, **children of pre-deceased child, Emily**.
At the time of Susan's death, the joint estate has a net value of R866 344.

- Calculate the amount that Peter, John, Amanda, Kaylin and Jack will inherit respectively.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Marriages in community of property: Solution

Peter (husband) = ½ of joint estate = R433 172.
Other ½ = Susan's deceased estate.
Peter: Child's portion **or** R250 000, whichever is **greatest**.
Number of *stirps* plus one. = 3 plus 1 = R433 172 ÷ 4 = R108 293. **R250 000 is greater than the child's portion**, Peter will inherit R250 000. Descendants to inherit remainder of estate, = R433 172 – R250 000 = R183 172 = the remainder.

Division *per stirpes* & representation:

R183 172 ÷ 3 children = R61 057,33 for John and Amanda each, and Emily who is pre-deceased, would have received R61 057,33 which is now divided between Kaylin and Jack: they represent dead Emily:
= R30 528,66 each.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Marriages out of COP excluding the accrual system

If the deceased is survived by a spouse and descendants and the spouses were married out of community of property excluding the accrual system, the surviving spouse will be entitled to a child's portion or R250 000, whichever is the greatest.

The rest is divided *per stirpes* with representation, if required.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Marriages out of COP excluding the accrual system

Example question

Susan & Peter married out of community of property – 20 yrs. The accrual system was also excluded.

3 children born from the marriage namely John, Amanda and Emily. The couple also adopted a child, Ben.

Susan dies intestate on 20 June 2012.

Survived by Peter, John, Amanda, Ben and two grandchildren, Kaylin and Jack, children of the pre-deceased child, Emily.

Net value of Susan's estate amounts to R802 365.

- Calculate how her estate will be distributed amongst Peter, John, Amanda, Ben, Kaylin and Jack.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Out of COP excluding the accrual system: Solution

Susan & Peter: NO joint estate.
Peter does not own any part of Susan's estate when alive.
Peter INHERITS child's portion or R250 000, whichever >.
A child's portion: Stirps plus one. = 4 + 1 = 5.
R802 365 ÷ 5 = R160 473.
Child's portion < R250 000, so Peter will inherit R250 000.
Descendants (children) inherit remainder of estate.
R802 365 – Peter's R250 000 = R552 365 = remainder of estate.

Division *per stirpes &* representation.

R552 365 ÷ 4 = R138 091,25.
John, Amanda and Ben = R138 091,25 each.
Emily pre-deceased. R138 091,25 divided equally, represented by Kaylin & Jack. Each gets R69 045,62½.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Out of COP INCLUDING the accrual system

A possible accrual claim must **first** be calculated and paid to the spouse's estate with the lower accrual in order for the net value for the deceased estate to be determined.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Out of COP INCLUDING the accrual system

Example question:

Susan and Peter again. Susan died intestate.
net value of R324 893. Peter's estate accrual: R527 898.
Susan's estate accrual: R252 346.
Susan is survived by Peter and one child, Amanda and two grand- children, Kaylin and Jack, children of the pre-deceased child, Emily.
Susan and Peter also had a son Ben, but he is pre-deceased, no descendants (children).

- Calculate how the estate will be distributed amongst Peter, Amanda, Kaylin and Jack.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

Out of COP INCLUDING the accrual system

Value of Susan's deceased estate?

Death or divorce terminates the marriage.

Spouse with no accrual or a smaller accrual than the estate of the other spouse acquires a claim against the other spouse for an amount equal to half of the difference between the accrual of the respective estates of the spouses.

Susan had the smaller accrual, she will be entitled to half of the difference between the accrual of their respective estates.

Peter's accrual, R527 898 less Susan's accrual, R252 346 amounts to R275 552 ÷ 2 = R137 776.

Add this to Susan's estate which is R324 893.

R324 893 + R137 776 = R462 669.

INTESTATE SUCCESSION: SPOUSE & DESCENDANTS

<u>Out of COP INCLUDING the accrual system</u>

Peter inherits a child's portion or R250 000, whichever is >.
Child's portion = stirps + one = 3. (Ben is pre-deceased, left no descendants, so his *stirp* ended there and is not counted).
R462 669 ÷ 3 = R154 223 is a child's share (or portion).

As a child's portion < than R250 000, Peter inherits R250 000.
The descendants (children) shall inherit remainder of estate, namely R462 669 – R250 000 = R212 669.

***Per stirpes* and representation**:
R212 669 ÷ 2 = R106 334,50.
Amanda will inherit R106 334,50.
Emily is pre-deceased, R106 334,50 divided equally between Kaylin and Jack who represents Emily.
They will each receive an amount of R53 167,25.