

## MATRIMONIAL PROPERTY REGIMES AND DAMAGES: THE FAR REACHES OF THE SOUTH AFRICAN CONSTITUTION

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### Summary

Section 18(b) of the *Matrimonial Property Act* 88 of 1984 allows for non-patrimonial damages to be claimed by a spouse married in community of property against his/her spouse. In *Van der Merwe v Road Accident Fund* 2006 4 SA 230 (CC) the court extended this exception to the notional purity of community of property to include patrimonial damages on the basis that section 18(b) discriminated unfairly against spouses married in community of property *vis-à-vis* spouses married out of community. The implications of this decision on commercial intercourse are discussed in this contribution against the background of prior decisions relating to the insolvency of spouses married in community of property.

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