

RE-PARTNERING AS A CONTINGENCY DEDUCTION IN CLAIMS FOR LOSS OF SUPPORT – COMPARING SOUTH AFRICAN AND AUSTRALIAN LAW

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Summary

In a claim for loss of support by the spouse of the deceased breadwinner, the claim will be influenced by the probable remarriage of the surviving spouse. In light of the recent extension of the traditional concept of family and 'husband and wife', the wider term 're-partnering' is suggested, instead of remarriage. If the widow has already entered into a new relationship during the course of the trial, it is taken into account as a proven fact and not as a contingency, according to the theory on compensating advantages. The right to a claim for loss of support is not automatically lost due to the re-partnering. The income and life expectancy of the new partner will be taken into account in calculating the extent of the claim. In three Australian jurisdictions, the Northern Territories, Victoria and Queensland, the legislature has promulgated legislation forbidding the use of remarriage as a contingency deduction in a claim for loss of support, irrespective of whether the re-partnering is a reality or just a probability. In general it can be stated that South African courts tend to over-emphasize the influence of probable re-partnering by a widow. In contrast to this, the manner in which re-partnering as a contingency is handled in Australian case law can be recommended as realistic and appropriate. In the recent decision in *De Sales v Ingrilli*,¹ the High Court of Australia held that in cases where remarriage has not yet occurred, it should only be taken into consideration as part of the 'standard' adjustment (general contingency adjustment) for uncertain future events, and could no longer be applied as a specific contingency, which tends to be higher than the mentioned general contingency adjustment. The court determined that the general contingency adjustment, which incorporated the remarriage of the widow, should only be five percent.

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1 *De Sales v Ingrilli* [2002] 212 CLR 338 (HC).