

## **REQUIREMENTS FOR A VALID ENGAGEMENT AND HOW TO TERMINATE ONE**

### ***Introduction***

For most couples, the idea of spending the rest of your life with someone you love stirs a lot of excitement. However, the moment a partner gets on one knee to propose, legal consequences flow. To benefit from the legal consequences, one must determine whether the engagement is valid by establishing whether requirements are met.

### ***General Requirements For A Valid Engagement***

As a point of departure, it is crucial to note that South African law does not require an engagement in order to conclude a marriage. An engagement is a *pactum de contrahendo*, which means that it is an agreement between two or more parties who have the serious intention of creating a legal obligation in terms of South African contract law.<sup>1</sup> As such, termination of an engagement constitutes a breach of contract. To claim damages in respect of such a breach of contract, an engagement has to be valid. The parties to the engagement must have had the capacity to act, meaning both parties must have been over the age of 18. In the case of a minor, the necessary consent is required from their parent/guardian unless the minor is emancipated by the court.

The validity of an engagement is also based on consensus. It is concluded by way of offer and acceptance. There must be no misrepresentations; however, parties do not need to be in the presence of each other. It is also crucial to note that at the time of the engagement, both parties must be in a position to conclude a civil marriage with one another; therefore, the parties must be unmarried. Where a partner who married at the time of proposal, promises marriage to a third party

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<sup>1</sup>Andre Calitz *An engagement pacta de contrahendo* <https://www.tmj.co.za/News/Read/110162> Date of access 20 October 2021

after obtaining a divorce or a spouse's death, the engagement is void. If the promised partner did not know about the existing marriage, then they can sue the married party for *contumelia* (an insult).

### **Termination Of An Engagement**

A valid engagement does not mean that an engagement cannot be terminated, but this has to be done in a lawful manner, which means there must be a just cause for terminating the engagement. For example, an engagement can be terminated by way of mutual withdrawal of consent, marriage or death of either of the parties, withdrawal of parental consent where one of the parties is a minor, misrepresentation or termination by one party for just and sound reasons such as sterility and impotence.

Where there is no just reason to terminate an engagement, this may result in financial consequences on the part of the terminating partner. In *Van Jaarsveld v Bridges (344/09) [2010] ZASCA 76; 2010 (4) SA 558 (SCA)*, it was found that no claim in South African law exists other than actual expenses incurred in the planning and preparation of the marriage.<sup>2</sup>

### **Conclusion**

There are specific requirements that need to be met by both partners to constitute a valid engagement. However, the constitution of a valid engagement does not preclude any of the parties from subsequently terminating the engagement.

Contact an attorney at SchoemanLaw for you family law needs!

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<sup>2</sup> Andre Calitz *An engagement pacta de contrahendo* <https://www.tmj.co.za/News/Read/110162> Date of access 20 October 2021