



ANALYSIS

- | | |
|---|---|
| <p>Title</p> <ol style="list-style-type: none"> 1. Short Title and commencement 2. Interpretation 3. Act to bind Crown 4. Act to be a code 5. Act to apply only during joint life-time of spouses 6. Maori land not affected 7. Application of Act to movables and immovables <p style="text-align: center;"><i>Nature of Matrimonial Property and Separate Property</i></p> <ol style="list-style-type: none"> 8. Matrimonial property defined 9. Separate property defined 10. Property acquired by succession or by survivorship or as a beneficiary under a trust or by gift <p style="text-align: center;"><i>Matrimonial Home and Family Chattels</i></p> <ol style="list-style-type: none"> 11. Division of matrimonial home and family chattels 12. Homesteads 13. Marriages of short duration 14. Extraordinary circumstances <p style="text-align: center;"><i>Other Provisions Relating to Division of Matrimonial Property</i></p> <ol style="list-style-type: none"> 15. Division of balance of matrimonial property 16. Adjustments may be made when each spouse owns a home at date of marriage 17. Sustenance or diminution of separate property 18. Contributions of spouses <p style="text-align: center;"><i>Matrimonial Property and Creditors</i></p> <ol style="list-style-type: none"> 19. Effect of Act while property is undivided 20. Matrimonial property and creditors <p style="text-align: center;"><i>Agreements</i></p> <ol style="list-style-type: none"> 21. Power to make agreements <p style="text-align: center;"><i>Proceedings under Act</i></p> <ol style="list-style-type: none"> 22. Courts to have concurrent jurisdiction 23. When application may be made 24. Time for commencement of proceedings | <ol style="list-style-type: none"> 25. Circumstances in which Court may make orders 26. Regard for interests of children 27. Occupation orders 28. Orders with respect to tenancy 29. Orders when property subject to hire purchase agreement 30. Orders in relation to insurance policies 31. Orders in relation to superannuation rights 32. Court may discharge or vary maintenance orders 33. Ancillary powers of Court 34. Discretion of Court as to orders 35. Proceedings may be in private 36. Evidence 37. Persons entitled to be heard 38. Inquiries, and settlement of schemes 39. Appeals 40. Costs 41. Registration of orders <p style="text-align: center;"><i>Protection of Spouses' Rights</i></p> <ol style="list-style-type: none"> 42. Notice of interest against title 43. Dispositions may be restrained 44. Dispositions may be set aside 45. Family chattels not to be disposed of <p style="text-align: center;"><i>Protection of Creditors</i></p> <ol style="list-style-type: none"> 46. Protection of mortgagee 47. Agreements to defeat creditors void <p style="text-align: center;"><i>Miscellaneous Provisions</i></p> <ol style="list-style-type: none"> 48. Incidence of orders against personal representative of spouse 49. Legal capacity of married women 50. No restraints upon anticipation 51. Proceedings in tort 52. Minors may apply without guardian <i>ad litem</i> 53. Rules of Court and regulations 54. Exemption from stamp duty 55. Transitional provision 56. Consequential amendments 57. Repeals and savings <p style="text-align: center;">Schedules</p> |
|---|---|

1976, No. 166

An Act to reform the law of matrimonial property; to recognise the equal contribution of husband and wife to the marriage partnership; to provide for a just division of the matrimonial property between the spouses when their marriage ends by separation or divorce, and in certain other circumstances, while taking account of the interests of any children of the marriage; and to reaffirm the legal capacity of married women [14 December 1976]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Matrimonial Property Act 1976.

(2) This Act shall come into force on the 1st day of February 1977.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Child of the marriage” means any child of the husband and wife; and includes any other child (whether or not a child of the husband or of the wife) who was a member of the family of the husband and wife at the time when they ceased to live together, or at the time immediately preceding an application under this Act if at that time they had not ceased to live together:

“Commonwealth country” means a country that is a member of the Commonwealth of Nations; and includes every territory for whose international relations the Government of any such country is responsible; and also includes the Republic of Ireland as if that country were a member of the Commonwealth of Nations:

“Contribution” has the meaning given to it by section 18 of this Act:

“Court” means a Court having jurisdiction in the proceedings by virtue of section 22 of this Act:

“Dwellinghouse” includes any flat or town house, whether or not occupied pursuant to a licence to occupy within the meaning of the Companies Amendment Act 1964:

“Family chattels”—

(a) Means chattels owned by the husband or the wife or both of them and which are—

- (i) Household furniture or household appliances, effects, or equipment; or
- (ii) Articles of household or family use or amenity or of household ornament, including tools, garden effects and equipment; or
- (iii) Motor vehicles, caravans, trailers, or boats, used wholly or principally, in each case, for family purposes; or
- (iv) Accessories of a chattel to which subparagraph (iii) of this paragraph applies; or
- (v) Household pets; and

(b) Includes any of the chattels mentioned in paragraph (a) of this definition which are in the possession of the husband or the wife pursuant to a hire purchase or conditional sale agreement or an agreement for lease or hire; but

(c) Does not include chattels used wholly or principally for business purposes, or money or securities for money:

“Homestead” means a matrimonial home where the dwellinghouse that comprises the family residence is situated on an unsubdivided part of land that is not used wholly or principally for the purposes of the household; but does not include a matrimonial home that is occupied—

(a) Pursuant to a licence to occupy within the meaning of Part I of the Companies Amendment Act 1964; or

(b) By virtue of the ownership of a specified share of any estate or interest in the land on which the dwellinghouse that comprises the family residence is situated and by reason of reciprocal agreements with the owners of the other shares; or

(c) In the case of a flat or town house which is part of a block of flats or town houses or is one of a number of flats or town houses situated on the same piece of land, under a lease or other arrangement whereby the occupants of the flat or town house are entitled to exclusive possession of it:

“Joint family home” means any land settled as a joint family home under the Joint Family Homes Act 1964:

“Magistrate’s Court” means a Magistrate’s Court presided over by a Magistrate appointed under the Domestic Proceedings Act 1968 to exercise the domestic jurisdiction of that Court:

“Marriage” includes a former marriage dissolved by divorce or by decree of dissolution of a voidable marriage (whether the divorce or dissolution takes place within or outside New Zealand), and a purported marriage that is void; and “husband”, “wife”, and “spouse” each have a corresponding meaning:

“Matrimonial home”—

(a) Means the dwellinghouse that is used habitually or from time to time by the husband and the wife or either of them as the only or principal family residence, together with any land, buildings, or improvements appurtenant to any such dwellinghouse and used wholly or principally for the purposes of the household; and

(b) Includes a joint family home:

“Matrimonial property” has the meaning given to it by section 8 of this Act:

“Owner”, in respect of any property, means the person who, apart from this Act, is by virtue of any enactment or rule of common law or equity the beneficial owner of that property; and “to own” has a corresponding meaning:

“Property” includes real and personal property and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest; and the term “asset” has a like meaning:

“Separate property” has the meaning given to it by section 9 of this Act.

(2) For the purposes of this Act the value of any property to which an application under this Act relates shall, subject to sections 12 and 21 of this Act, be its value as at the date of the hearing, unless the Court in its discretion otherwise decides.

(3) For the purposes of this Act the share of a spouse in the matrimonial property shall, subject to section 21 of this Act, be determined as at the date on which the parties ceased to live together as husband and wife, or, if they have not ceased to live together as husband and wife, as at the date of the application to the Court.

(4) Where the classification of any property as matrimonial property or as any particular type of matrimonial property depends on the use to which it has been put, that classification shall be determined by the use to which it was put by the parties to the marriage, or, if they have ceased to live together as husband and wife, to the use to which it was being put before the parties to the marriage ceased to live together as husband and wife.

Cf. 1963, No. 71, ss. 2, 55; 1963, No. 72, s. 2

3. Act to bind Crown—This Act shall bind the Crown.

4. Act to be a code—(1) Except as otherwise expressly provided in this Act, this Act shall have effect in place of the rules and presumptions of the common law and of equity to the extent that they apply to transactions between husband and wife in respect of property, and, in cases for which provision is made by this Act, between husband and wife, and each of them, and third persons.

(2) Without limiting the generality of subsection (1) of this section,—

- (a) The presumption of advancement; and
- (b) The presumption of resulting trust; and
- (c) The presumption that the use of a wife's income by her husband with her consent during the marriage is a gift,—

shall not apply between husband and wife.

(3) Every enactment shall, unless it or this Act otherwise expressly provides, be read subject to this Act.

(4) Where any question relating to matrimonial property arises between husband and wife, or between either or both of them and any other person, in any other proceedings, the Court shall decide the question as if it had been raised in proceedings under this Act.

(5) Nothing in this section shall affect—

- (a) The law that applies where the husband or the wife is acting as trustee under any deed or will; or
- (b) The law relating to the imposition, assessment, and collection of estate duty;

and, for the purposes of this subsection, every enactment and rule of law or of equity shall continue to operate and apply accordingly as if this section had not been passed.

5. Act to apply only during joint lifetime of spouses—

(1) Subject to subsections (2) and (3) of this section, and

except as otherwise expressly provided in this Act, nothing in this Act shall apply after the death of either spouse, and every enactment and rule of law or of equity shall continue to operate and apply in such case as if this Act had not been passed.

(2) The death of either spouse shall not affect the validity or effect of anything already done or suffered pursuant to the provisions of this Act.

(3) If, while any proceedings under this Act are pending in any Court, one of the spouses dies, those proceedings may continue and be completed, and any appeal may be brought and determined, and the Court may make any order therein under this Act that it might have made if the spouse had not died.

Cf. 1963, No. 72, s. 7 (6)

6. Maori land not affected—Nothing in this Act shall apply in respect of any Maori land within the meaning of the Maori Affairs Act 1953.

7. Application of Act to movables and immovables—

(1) This Act shall apply to—

- (a) Immovables which are situated in New Zealand; and
- (b) Movables which are situated in New Zealand or elsewhere if, at the date of an application made pursuant to this Act, or of any agreement between the spouses relating to the division of their property, either the husband or the wife is domiciled in New Zealand.

(2) This Act shall also apply in any case where the husband and the wife agree in writing that it shall apply.

(3) Subject to subsection (2) of this section, this Act shall not apply to any matrimonial property if the parties to the marriage have agreed, before or upon their marriage to each other, that the matrimonial property law of some country other than New Zealand shall apply to that property, and the agreement is in writing or is otherwise valid according to the law of that country, unless the Court determines that the application of the law of the other country by virtue of any such agreement would be contrary to justice or public policy.

(4) Notwithstanding anything in subsection (1) of this section, where any order under this Act is sought against any person who is neither domiciled nor resident in New Zealand, the Court may decline to make an order in respect of any movable property that is situated outside New Zealand.

Nature of Matrimonial Property and Separate Property

8. Matrimonial property defined—Matrimonial property shall consist of—

- (a) The matrimonial home whenever acquired; and
- (b) The family chattels whenever acquired; and
- (c) All property owned jointly or in common in equal shares by the husband and the wife; and
- (d) All property owned immediately before the marriage by either the husband or the wife if the property was acquired in contemplation of his or her marriage to the other and was intended for the common use and benefit of both the husband and the wife; and
- (e) Subject to subsections (3) to (6) of section 9 and to section 10 of this Act, all property acquired by either the husband or the wife after the marriage, including property acquired for the common use and benefit of both the husband and the wife out of property owned by either the husband or the wife or both of them before the marriage or out of the proceeds of any disposition of any property so owned; and
- (f) Any income and gains derived from, the proceeds of any disposition of, and any increase in the value of, any property described in paragraphs (a) to (e) of this section; and
- (g) Any policy of assurance taken out by one spouse on his or her own life or the life of the other spouse, whether for his or her benefit or the benefit of the other spouse (not being a policy that was fully paid up at the time of the marriage and not being a policy to the proceeds of which a third person is beneficially entitled), whether the proceeds are payable on the death of the assured or on the occurrence of a specified event or otherwise; and
- (h) Any policy of insurance in respect of any property described in paragraphs (a) to (e) of this section; and
- (i) Any pension, benefit, or right to which either the husband or the wife is entitled or may become entitled under any superannuation scheme if the entitlement is derived, wholly or in part, from contributions made to the scheme after the marriage or from employment or office held since the marriage; and

(j) All other property that the spouses have agreed, pursuant to section 21 of this Act, shall be matrimonial property; and

(k) Any other property that is matrimonial property by virtue of any other provision of this Act or by virtue of any other Act.

9. Separate property defined—(1) Separate property means all property of either spouse which is not matrimonial property.

(2) Subject to subsection (6) of this section and to sections 8 (e) and 10 of this Act, all property acquired out of separate property, and the proceeds of any disposition of separate property, shall be separate property.

(3) Subject to subsection (6) of this section, any increase in the value of separate property, and any income or gains derived from such property, shall be separate property unless the increase in value or the income or gains (as the case may be) were attributable wholly or in part—

(a) To actions of the other spouse; or

(b) To the application of matrimonial property,—
in either of which events the increase in value or the income or gains (as the case may be) shall be matrimonial property.

(4) All property acquired by either the husband or the wife while they are not living together as husband and wife shall be separate property unless the Court considers that it is just in the circumstances to treat such property or any part thereof as matrimonial property.

(5) Subject to section 21 of this Act, all property acquired by either the husband or the wife after an order of the Court has been made defining their respective interests in the matrimonial property, or dividing or providing for the division of that property, shall be separate property:

Provided that where the matrimonial property has been divided upon the bankruptcy of a spouse—

(a) The matrimonial home and any family chattels acquired subsequent to that division may be matrimonial property; and

(b) Any other property acquired by either the husband or the wife after the discharge of that spouse from bankruptcy may be matrimonial property.

(6) Subject to section 10 of this Act, any separate property which is or any proceeds of any disposition of, or any increase in the value of, or any income or gains derived from, separate property, which are, with the express or implied consent of the spouse owning, receiving, or entitled to them, used for the

acquisition or improvement of, or to increase the value of, or the amount of any interest of either the husband or the wife in, any property referred to in section 8 of this Act shall be matrimonial property.

10. Property acquired by succession or by survivorship or as a beneficiary under a trust or by gift—(1) Property acquired by succession or by survivorship or as a beneficiary under a trust or by gift from a third person shall not be matrimonial property unless, with the express or implied consent of the spouse who received it, the property or the proceeds of any disposition of it have been so intermingled with other matrimonial property that it is unreasonable or impracticable to regard that property or those proceeds as being separate property.

(2) Property acquired by gift from the other spouse shall not be matrimonial property unless the gift is used for the benefit of both the husband and the wife.

(3) Notwithstanding subsections (1) and (2) of this section and section 9 (4) of this Act, both the matrimonial home and the family chattels shall be matrimonial property unless designated separate property by an agreement made in accordance with section 21 of this Act.

Matrimonial Home and Family Chattels

11. Division of matrimonial home and family chattels—

(1) Subject to the provisions of this section, upon the division of the matrimonial property each spouse shall share equally in—

(a) The matrimonial home; and

(b) The family chattels.

(2) Notwithstanding anything in subsection (1) (a) of this section, where—

(a) The husband or the wife or both of them have sold the matrimonial home with the intention of applying the proceeds of the sale wholly or in part towards the acquisition of another home as a matrimonial home; and

(b) That home has not been acquired; and

(c) Not more than 2 years have elapsed since the date when those proceeds were received or became payable, whichever is the later,—

each spouse shall share equally in those proceeds as if they were the matrimonial home.

(3) Where—

(a) Subsection (2) of this section does not apply; and

(b) Either—

(i) There is no matrimonial home; or

(ii) The matrimonial home is not owned by the husband or the wife or both of them,—

the Court shall award each spouse an equal share in such part of the matrimonial property as it thinks just in order to compensate for the absence of an interest in the matrimonial home.

(4) This section shall be subject to sections 12, 13, 14, and 16 of this Act.

12. Homesteads—(1) Where the matrimonial home is a homestead which is owned by the husband or the wife or both of them, section 11 (1) (a) of this Act shall not apply but each spouse shall instead share equally in a sum of money equal to the equity of the husband or the wife or both of them in the homestead; and any spouse who does not have a beneficial interest in the land on which the homestead is situated shall, until his or her share of that sum is paid or otherwise satisfied, be deemed to be beneficially interested in that land.

(2) For the purposes of subsection (1) of this section the value of the homestead shall be determined in accordance with an apportionment of the capital value of the land on which the homestead is situated. Such apportionment shall be made and such capital value shall be determined by the Valuer-General on the requisition of either spouse as at the date of the making of the valuation. Either spouse may appeal to the Administrative Division of the Supreme Court against any apportionment made or any value determined by the Valuer-General under this section.

(3) This section shall be subject to sections 13, 14, and 16 of this Act.

13. Marriages of short duration—(1) Where a marriage has been of short duration, sections 11 and 12 of this Act shall not apply—

(a) To any asset owned wholly or substantially by one spouse at the date of the marriage; or

(b) To any asset that has come to one spouse after the date of the marriage by succession or by survivorship or as the beneficiary under a trust or by gift from a third person; or

(c) Where the contribution of one spouse to the marriage partnership has clearly been disproportionately greater than that of the other spouse.

(2) In every case to which subsection (1) of this section applies, the share of each spouse in the matrimonial property shall, upon the division of that property, be determined in accordance with the contribution of each to the marriage partnership.

(3) For the purposes of this section a marriage of short duration means a marriage in which the spouses have lived together as husband and wife for a period of less than 3 years (in the computation of which any period of resumed cohabitation with the motive of reconciliation may be excluded if it lasts for not more than 3 months) or, if the Court having regard to all the circumstances of the marriage considers it just, for a period longer than 3 years.

14. Extraordinary circumstances—Where there are extraordinary circumstances that, in the opinion of the Court, render repugnant to justice the equal sharing between the spouses of any property to which section 11 of this Act applies or of any sum of money pursuant to section 12 of this Act, the share of each shall, notwithstanding anything in section 11 or section 12 of this Act, be determined in accordance with the contribution of each to the marriage partnership.

Other Provisions Relating to Division of Matrimonial Property

15. Division of balance of matrimonial property—

(1) Upon the division of matrimonial property (other than property to which section 11 or section 12 of this Act applies), each spouse shall share equally in it unless his or her contribution to the marriage partnership has clearly been greater than that of the other spouse.

(2) Where, pursuant to subsection (1) of this section, the spouses do not share equally in the matrimonial property or any part of the matrimonial property, the share of each in the matrimonial property or in that part of it shall be determined in accordance with the contribution of each to the marriage partnership.

(3) This section shall be subject to sections 16 and 17 of this Act.

16. Adjustments may be made when each spouse owns a home at date of marriage—Notwithstanding anything in sections 11 to 15 of this Act, where, at the date of the marriage, each spouse owned a home capable of becoming a matrimonial home, but the home (or the proceeds of the sale thereof) of only one spouse is included in the matrimonial property at the time when the property falls to be divided under this Act, the Court may make such adjustments to the shares of the spouses in any of the matrimonial property (including the matrimonial home and the family chattels) as it thinks just to compensate for the inclusion of the home of only one spouse in the matrimonial property.

17. Sustenance or diminution of separate property—(1) Notwithstanding anything in sections 11 to 15 of this Act, where the separate property of one spouse has been sustained by—

- (a) The application of matrimonial property; or
- (b) The actions of the other spouse,—

the Court may increase the share to which the other spouse would otherwise be entitled in the matrimonial property or order that the spouse pay to the other a sum of money by way of compensation.

(2) Notwithstanding anything in sections 11 to 15 of this Act, where the separate property of one spouse has been materially diminished in value by the deliberate actions of the other spouse, the share to which the other spouse would otherwise be entitled in the matrimonial property may be diminished to such extent as the Court thinks just.

18. Contributions of spouses—(1) For the purposes of this Act a contribution to the marriage partnership means all or any of the following,—

- (a) The care of any child of the marriage or of any aged or infirm relative or dependant of the husband or the wife;
- (b) The management of the household and the performance of household duties;
- (c) The provision of money, including the earning of income, for the purposes of the marriage partnership;
- (d) The acquisition or creation of matrimonial property, including the payment of money for those purposes;
- (e) The payment of money to maintain or increase the value of—

- (i) The matrimonial property or any part thereof; or
 - (ii) The separate property of the other spouse or any part thereof:
- (f) The performance of work or services in respect of—
- (i) The matrimonial property or any part thereof; or
 - (ii) The separate property of the other spouse or any part thereof:
- (g) The forgoing of a higher standard of living than would otherwise have been available:
- (h) The giving of assistance or support to the other spouse (whether or not of a material kind), including the giving of assistance or support which—
- (i) Enables the other spouse to acquire qualifications; or
 - (ii) Aids the other spouse in the carrying on of his or her occupation or business.
- (2) There shall be no presumption that a contribution of a monetary nature (whether under subsection (1) (c) of this section or otherwise) is of greater value than a contribution of a non-monetary nature.

(3) In determining the contribution of a spouse to the marriage partnership any misconduct of that spouse shall not be taken into account to diminish or detract from the positive contribution of that spouse unless the misconduct has been gross and palpable and has significantly affected the extent or value of the matrimonial property. The Court may, however, have regard to such misconduct in determining what order it should make under any of the provisions of sections 26, 27, 28, and 33 of this Act.

Matrimonial Property and Creditors

19. Effect of Act while property is undivided—Except as otherwise expressly provided in this Act, nothing in the Act shall—

- (a) Affect the title of any third person to any property, or affect the power of either spouse to acquire, deal with, or dispose of any property or to enter into any contract or other legal transaction whatsoever as if this Act had not been passed; or
- (b) Limit or affect the operation of any mortgage, charge, or other security for the repayment of a debt given

by either spouse over property owned by him or her and every such instrument shall have the same effect as if this Act had not been passed.

20. Matrimonial property and creditors—(1) Subject to subsection (2) of this section, and except as otherwise expressly provided in this Act,—

- (a) Secured and unsecured creditors of a spouse shall have the same rights against that spouse and against property owned by the spouse as if this Act had not been passed; and
- (b) All property that would have passed to the Official Assignee on or following the bankruptcy of a spouse if this Act had not been passed (and no other property) shall so pass to the Official Assignee.

(2) Each spouse shall have a protected interest in the matrimonial home, which interest shall—

- (a) Where subsection (1) or subsection (2) of section 11 of this Act applies, be to the extent of the specified sum or one half of the equity of the husband and the wife in the home, whichever is the lesser;
- (b) Where section 11 (3) or section 12 of this Act applies, be to the extent of the specified sum or one half of the property or money shared under the section applicable, whichever is the lesser;

and such protected interest shall not be liable for the unsecured personal debts of the other spouse. In this subsection “specified sum” means \$10,000 or such greater amount as the Governor-General by Order in Council may, for the time being, prescribe as the specified sum for the purposes of this subsection.

(3) Where, on the bankruptcy of a spouse, the matrimonial home (including a homestead) or, where section 11 (2) of this Act applies, the proceeds of the sale of the matrimonial home, pass to the Official Assignee, he shall, after paying any debts secured on the home or, as the case may be, those proceeds and any unsecured debts (other than personal debts) of that spouse, pay to the other spouse the amount of his or her protected interest or so much of it as remains after paying those debts.

(4) Where, on the bankruptcy of a spouse, section 11 (3) of this Act applies, the Official Assignee shall pay to the other spouse such amount in satisfaction of the protected interest of that spouse as the Court, on application by the Official Assignee or by that spouse, may direct.

(5) The value of the matrimonial property that may be divided between husband and wife pursuant to this Act shall be ascertained by deducting from the value of the matrimonial property owned by each spouse:

- (a) Any secured or unsecured debts (other than personal debts or debts secured wholly on separate property) owed by that spouse; and
- (b) The unsecured personal debts owed by that spouse to the extent that they exceed the value of any separate property of that spouse.

(6) Where any secured or unsecured personal debt of one spouse is paid or satisfied (whether voluntarily or pursuant to legal process) out of the matrimonial property, the Court may order that—

- (a) The share of the other spouse in the matrimonial property be increased proportionately;
- (b) Assets forming part of that spouse's separate property be deemed matrimonial property for the purposes of any division of matrimonial property under this Act;
- (c) That spouse pay to the other spouse a sum of money by way of compensation.

(7) For the purposes of this section, "personal debt" means a debt incurred by the husband or the wife, other than a debt incurred—

- (a) By the husband and his wife jointly; or
- (b) In the course of a common enterprise carried on by the husband and the wife, whether or not together with any other person; or
- (c) For the purpose of improving the matrimonial home or acquiring or improving or repairing family chattels; or
- (d) For the benefit of both the husband and the wife or of any child of the marriage in the course of managing the affairs of the household or bringing up any child of the marriage.

(8) Nothing in this section shall derogate from the provisions of the Joint Family Homes Act 1964.

Agreements

21. Power to make agreements—(1) Subject to section 47 of this Act, a husband and wife, or any 2 persons in contemplation of their marriage to each other, may, for the purpose of contracting out of the provisions of this Act, make such agreement with respect to the status, ownership,

and division of their property (including future property) as they think fit.

(2) Subject to section 47 of this Act, a husband and wife may, for the purpose of settling any differences that have arisen between them concerning property owned by either or both of them, make such agreement with respect to the status, ownership, and division of that property as they think fit.

(3) Without limiting the generality of subsections (1) and (2) of this section, any such agreement may—

- (a) Provide that any property or any class of property shall be matrimonial property or shall be separate property; or
- (b) Define the share of the matrimonial property or any part thereof that each spouse shall be entitled to upon the separation of the spouses or upon the dissolution of the marriage otherwise than by death; or
- (c) Provide for the calculation of such share and prescribe the method by which the matrimonial property or any part thereof may be divided.

(4) Every agreement entered into under this section shall be in writing signed by both parties.

(5) Each party to an agreement under this section shall have independent legal advice before signing the agreement.

(6) The signature of each party to an agreement under this section shall—

- (a) If signed in New Zealand, be witnessed by a solicitor of the Supreme Court of New Zealand; or
- (b) If signed in a Commonwealth country outside New Zealand, be witnessed by a solicitor entitled to practise in that country or by a notary public; or
- (c) If signed in a country that is not a Commonwealth country, be witnessed by a notary public,—

and, in every case, the witness shall certify that before the party whose signature he has witnessed signed the agreement he has explained to that party the effect and implications of the agreement.

(7) An agreement under this section entered into by a minor, and every instrument executed by any such minor for the purpose of giving effect to any such agreement, shall be as valid and effectual as if the minor were of full age:

Provided that where the minor has not attained the age of 18 years and is not and has not been married, an agreement under this Act shall not be valid without the approval of the Court, which may be given upon application by the

minor before or after the agreement has been signed by the parties.

(8) An agreement under this section shall be void in any case where—

- (a) Subsections (4) to (6) of this section have not been complied with; or
- (b) The Court is satisfied that it would be unjust to give effect to the agreement.

(9) Notwithstanding subsection (8) (a) of this section, where subsections (4) to (6) of this section have not been complied with in respect of an agreement under this section, the Court may in the course of any proceedings under this Act, or on application made for the purpose, declare that an agreement under this section shall have effect in whole or in part or for any particular purpose if it is satisfied that the non-compliance has not materially prejudiced the interests of any party to the agreement.

(10) In deciding whether it would be unjust to give effect to an agreement under this section the Court shall have regard to:

- (a) The provisions of the agreement;
- (b) The time that has elapsed since the agreement was entered into;
- (c) Whether the agreement was unfair or unreasonable in the light of all the circumstances at the time it was entered into;
- (d) Whether the agreement has become unfair or unreasonable in the light of any changes in circumstances since it was entered into (whether or not those changes were foreseen by the parties);
- (e) Any other matters that the Court considers relevant.

(11) Nothing in subsection (8) or subsection (10) of this section shall limit or affect any enactment or rule of law or of equity whereby a contract is void, voidable, or unenforceable on any other ground.

(12) Where any agreement purporting to be made pursuant to this section is void or is avoided or is unenforceable, the provisions of this Act (other than this section) shall have effect as if the agreement had never been made.

(13) Nothing in this section shall limit or affect the capacity of a husband or a wife to agree to acquire or hold any property jointly or in common, whether or not together with any other person, and whether legally or beneficially.

(14) Nothing in this section shall limit or affect the power of a husband and a wife to make gifts to each other; and notwithstanding any rule of law a gift between husband

and wife may be made orally or in writing and shall not require to be made by deed or by delivery.

(15) Any matrimonial property to which an agreement under this section does not apply shall be subject to the provisions of this Act.

(16) An order under section 26 of this Act may be made and shall have effect notwithstanding any agreement under this section.

Proceedings under Act

22. Courts to have concurrent jurisdiction—(1) The Supreme Court and a Magistrate's Court shall each have jurisdiction in respect of proceedings under this Act:

Provided that a Magistrate's Court shall have no jurisdiction to entertain any application in respect of any matrimonial property where proceedings under this Act relating to or affecting that property are pending in the Supreme Court at the date at which the application is made.

(2) Notwithstanding anything in subsection (1) of this section, if a Magistrate is of the opinion that any proceedings under this Act, or any question in any such proceedings, would be more appropriately dealt with in the Supreme Court, he may, upon application by any party to the proceedings or without any such application, refer the proceedings or the question to that Court.

(3) The Supreme Court, upon application by any party to proceedings pending under this Act in a Magistrate's Court, shall order the proceedings to be removed into the Supreme Court unless it is satisfied that the proceedings would be more appropriately dealt with in a Magistrate's Court. Where the proceedings have been so removed they shall be continued in the Supreme Court as if they had been properly and duly commenced in that Court.

23. When application may be made—An application to the Court under this Act may be made—

- (a) By either spouse or by the husband and the wife jointly; or
- (b) By the Official Assignee in Bankruptcy of the property of either spouse; or
- (c) By any person on whom conflicting claims in respect of property are made by the husband and the wife.

24. Time for commencement of proceedings—(1) An application made after the marriage has been dissolved by

divorce or by dissolution of a voidable marriage or after a decree of nullity of a void marriage has been made shall be made before the expiration of the period of 12 months after the date of the making of the decree absolute of divorce or, as the case may be, of dissolution of voidable marriage or the decree of nullity of void marriage.

(2) Notwithstanding anything in subsection (1) of this section, the Court may extend the time for making an application after hearing the applicant and such other persons having an interest in the property that would be affected by the order as the Court thinks necessary; and this power shall extend to cases where the time for applying has already expired, including cases where it expired before the commencement of this Act.

25. Circumstances in which Court may make orders—

(1) On an application under section 23 of this Act, the Court may, subject to the provisions of this Act, make:

(a) Such order as it considers just determining the respective shares of each spouse in the matrimonial property or any part thereof, or dividing the matrimonial property or any part thereof between the husband and the wife:

(b) Any other order that it is empowered to make by any provision of this Act.

(2) Subject to subsection (3) of this section, the Court shall not make an order pursuant to subsection (1) of this section unless it is satisfied that—

(a) The husband and wife are living apart (whether or not they have continued to live in the same residence) or are separated; or

(b) The marriage of the husband and the wife has been dissolved; or

(c) One spouse is, by gross mismanagement or by wilful or reckless dissipation of property or earnings, endangering the matrimonial property or seriously diminishing its value; or

(d) The husband or the wife is an undischarged bankrupt.

(3) Notwithstanding anything in subsection (2) of this section, the Court may at any time, subject to the provisions of this Act, make such declaration or order relating to the status, ownership, vesting, or possession of any specific property as it considers just.

26. Regard for interests of children—(1) The Court shall, in proceedings under this Act, have regard to the interests of any minor or dependent children of the marriage, and may if it considers it just make an order settling the matrimonial property or any part thereof for the benefit of the children of the marriage or of any of them, and reserving such interest (if any) of the husband or the wife or both in the property as the Court considers just.

(2) If in the opinion of the Court there are special circumstances which render it necessary or expedient that any minor or dependent children of the marriage be represented in any proceedings under this Act, the Court may appoint a solicitor or counsel to represent such children. Where any solicitor or counsel is so appointed his fees and expenses shall be paid by such party or parties to the proceedings as the Court shall order or, if the Court so decides, shall be paid out of money appropriated for the purpose by Parliament.

27. Occupation orders—(1) The Court may make an order granting to the husband or the wife, for such period or periods and on such terms and subject to such conditions as the Court thinks fit, the right personally to occupy the matrimonial home or any other premises forming part of the matrimonial property.

(2) Where an order is made under subsection (1) of this section, the person in whose favour it is made shall be entitled, to the exclusion of the other spouse, personally to occupy the matrimonial home or the other premises to which the order relates.

(3) Notwithstanding anything in section 5 of this Act, an order made under subsection (1) of this section against the husband or wife shall be enforceable against the personal representative of the person against whom it is made, unless the Court otherwise directs.

(4) An order made under subsection (1) of this section by a Magistrate's Court shall be enforceable as if it were an order for recovery of land made pursuant to section 31 (1) (d) of the Magistrates' Courts Act 1947.

Cf. 1963, No. 71, s. 57

28. Orders with respect to tenancy—(1) Notwithstanding the provisions of section 23 of this Act, the Court may at any time upon application by the husband or the wife make an order vesting in either the husband or the wife (in this section

referred to as the applicant) the tenancy of any dwelling-house, being a dwellinghouse within the meaning of the Tenancy Act 1955,—

- (a) Of which at the time of the making of the order the applicant's spouse (in this section referred to as the other party) is or was either the sole tenant or a tenant holding jointly or in common with the applicant; and
- (b) Of which at the time of the making of the order under this subsection the other party is a tenant as aforesaid; and
- (c) In which the applicant or the other party resides at the time of the making of the order under this subsection.

(2) On the taking effect of an order made under subsection (1) of this section, unless the tenancy is sooner lawfully determined, the applicant shall become the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of that order, and the other party shall cease to be the tenant. Every such order shall have effect and may be enforced as if it were an order of the Court for possession of the land granted in favour of the applicant.

(3) Nothing in this section or in any order made under this section shall be construed to limit or affect the operation of any enactment or rule of law for the time being applicable to any tenancy to which this section applies or to the dwellinghouse held under the tenancy, or to authorise the Court to vary, except by vesting or revesting the tenancy pursuant to this section, any express or implied term or condition of the tenancy.

(4) On the application of the other party or his personal representative in any case in which an order is made under subsection (1) of this section, the Court may, if it thinks fit, make an order discharging the first-mentioned order and revesting the tenancy accordingly.

(5) On the taking effect of any revesting order made under subsection (4) of this section, unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall become the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of the revesting order.

(6) For the purposes of this section, the term "tenant", in relation to any dwellinghouse, includes any person whose

tenancy has expired or been determined, and who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwellinghouse; and the term "tenancy" has a corresponding meaning.

Cf. 1963, No. 71, s. 60

29. Orders when property subject to hire purchase agreement—Where any property which is the subject of an application under this Act is in the possession of the husband or the wife or both under a hire purchase agreement or conditional sale agreement or under an agreement to hire or lease, the Court may make an order vesting the rights and obligations under the agreement in either spouse and any such order shall have effect notwithstanding anything in any agreement.

Cf. 1963, No. 71, s. 62 (4)

30. Orders in relation to insurance policies—Where an application under this Act relates to any policy of assurance or insurance the Court may—

- (a) Vest the policy in the husband or the wife subject to such conditions (including the payment of premiums by either spouse) as it thinks just;
- (b) Direct the payment of a proportion of the surrender or paid-up value from one spouse to the other;
- (c) Make such other order as it thinks just.

31. Orders in relation to superannuation rights—(1) Where the matrimonial property to which any application under this Act relates includes property of the kind described in section 8 (i) of this Act, the Court may make any order under this Act, or any provision of any such order, conditional on the husband or wife entering into an arrangement or deed of covenant designed to ensure that the other spouse receives his or her appropriate share of that property, and every arrangement or deed entered into pursuant to any such condition shall have effect according to its tenor.

(2) A copy of any arrangement or deed entered into pursuant to subsection (1) of this section may be served on the manager of the superannuation scheme from which the entitlement is derived.

(3) Where a copy of any such arrangement or deed is served on any such manager he shall, notwithstanding the provisions of any Act, deed, or rules governing the scheme, be bound by the provisions of the arrangement or deed.

32. Court may discharge or vary maintenance orders—

(1) In any proceedings under this Act, the Court shall have regard to any maintenance order made against one spouse in favour of the other spouse or in favour of any child of the marriage and to any maintenance agreement and may, if it considers it just, discharge, suspend, or vary any such order, whether it has been made in the Supreme Court or in a Magistrate's Court, and may cancel, suspend, or vary any maintenance agreement, whether or not that agreement has been registered under Part VII of the Domestic Proceedings Act 1968.

(2) An order made under this Act in respect of matrimonial property shall not be sufficient to support an application for discharge, variation, or suspension of a maintenance order pursuant to section 47 of the Matrimonial Proceedings Act 1963 or section 85 of the Domestic Proceedings Act 1968, or for cancellation, suspension, or variation of a maintenance agreement pursuant to section 85 of the Domestic Proceedings Act 1968.

(3) For the purposes of this section, the expression "maintenance agreement" means any written agreement made between a husband and his wife, and providing for the periodical payment to either party of sums of money towards the maintenance of the other party or of any child of the marriage.

33. Ancillary powers of Court—(1) The Court may make all such other orders and give such directions as may be necessary or expedient to give effect, or better effect, to any order made under any of the provisions of sections 25 to 32 of this Act.

(2) The Court may, at any time it thinks fit, extend, vary, cancel, or discharge any order made under any of the provisions of sections 26 to 32 of this Act, and may vary any terms or conditions upon or subject to which any such order has been made.

(3) In particular, but without limiting the generality of subsections (1) and (2) of this section, the Court may make any one or more of the following orders:

(a) An order for the sale of the matrimonial property or any part thereof, and for the division, vesting, or settlement of the proceeds:

(b) Any order vesting any property owned by both the husband and the wife jointly in both the husband and the wife in common in such shares as the Court considers just:

- (c) An order vesting the matrimonial property or any part thereof in the husband or the wife:
 - (d) An order postponing the vesting of any share in the matrimonial property, or any part of such share, until such future date or until the occurrence of such future event as may be specified in the order:
 - (e) An order for the partition or vesting of any property:
 - (f) An order vesting any property owned by one spouse in both spouses jointly or in common in such shares as the Court considers just:
 - (g) An order vesting any property owned by both spouses, jointly or in common, in one spouse:
 - (h) An order for the cancellation of the settlement of a joint family home:
 - (i) An order for the payment of a sum of money by one spouse to the other spouse:
 - (j) An order for the transfer of land, or of any interest in land, including a lease, licence, or tenancy:
 - (k) An order for the transfer of shares or stock, or of mortgages, charges, debentures, or other securities, or of the title or documents of title of any property:
 - (l) An order for the transfer or rights or obligations under any instrument or contract, and any such order shall have effect notwithstanding any provision or term of the instrument or contract:
 - (m) An order varying the terms of any trust or settlement, not being a trust under a will or other testamentary disposition:
 - (n) An order requiring one spouse to pay a sum of money, or transfer any other property to the other spouse, the money or property being part of the separate property of the first-mentioned spouse.
- (4) Where under any order made under this Act one spouse is or may become liable to pay to the other a sum of money, the Court may direct that it shall be paid either in one sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions (including a condition requiring the payment of interest) as the Court thinks fit.
- (5) Where, pursuant to this Act, the Court makes an order for the sale of any matrimonial property and for the division, application, or settlement of the proceeds, the Court may appoint a person to sell the property and divide, apply, or settle the proceeds accordingly; and the execution of any in-

strument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the property is vested.

(6) Any order under this Act may, subject to the provisions of this Act, be made upon such terms and subject to such conditions (if any) as the Court thinks fit.

34. Discretion of Court as to orders—Where application is made to the Court for any order under any provision of this Act, the Court may, subject to the provisions of the Act, make any other order under this Act which could have been made if application for that other order had been made when the first-mentioned application was made.

Cf. 1963, No. 71, s. 78

35. Proceedings may be in private—(1) Any application or appeal under this Act shall be heard in private if the husband or the wife so desires it.

(2) Subject to subsection (1) of this section, where any application is made under this Act to a Magistrate's Court, the provisions of section 111 of the Domestic Proceedings Act 1968 shall apply.

Cf. 1963, No. 72, s. 7 (2)

36. Evidence—In all proceedings under this Act, and whether by way of hearing in the first instance or by way of appeal or otherwise howsoever, the Court may receive any evidence that it thinks fit, whether it is otherwise admissible in a Court of law or not.

37. Persons entitled to be heard—Before any order is made under this Act, such notice as the Court directs shall be given to any person having an interest in the property which would be affected by the order, and any such person shall be entitled to appear and to be heard in the matter as a party to the application.

Cf. 1963, No. 72, s. 7 (1)

38. Inquiries, and settlement of schemes—(1) The Court may, on any application under this Act, appoint the Registrar of the Court, or such other person as the Court thinks fit, to make an inquiry into the matters of fact in issue between the parties, and to report thereon to the Court.

(2) A copy of every such report shall be given to the solicitor or counsel appearing for each party to the proceedings or, if any party is not represented by solicitor or counsel, to that party. Any party may tender evidence on any matter referred to in any such report.

(3) The Court may, on any application under this Act, with the consent of the parties, appoint the Registrar of the Court, or such other person as the Court thinks fit, to settle a scheme in respect of the property comprised in the application and to submit it to the Court for approval.

(4) The fees and expenses of any person other than the Registrar appointed under subsection (1) or subsection (3) of this section shall be paid out of the Consolidated Revenue Account from money from time to time appropriated for that purpose by Parliament:

Provided that, if the Court thinks proper, it may order any party to refund to the Crown such amount as the Court specifies in respect of those fees and expenses, and that amount shall be recoverable in any Court of competent jurisdiction as a debt due to the Crown.

39. Appeals—(1) The provisions of the Magistrates' Courts Act 1947 relating to appeals to the Supreme Court against a decision of a Magistrate's Court shall apply with respect to any order or decision of a Magistrate's Court under this Act.

(2) The provisions of the Judicature Act 1908 relating to appeals to the Court of Appeal against a decision of the Supreme Court of New Zealand shall apply with respect to any order or decision of the Supreme Court of New Zealand under this Act.

(3) Subject to the rules governing appeals to Her Majesty in Council against a decision of the Court of Appeal of New Zealand or of the Supreme Court of New Zealand, such an appeal may be made in proceedings under this Act to Her Majesty in Council.

(4) The Supreme Court or the Court of Appeal, as the case may be, may, in its discretion, rehear the whole or any part of the evidence, or may receive further evidence, if it thinks that the interests of justice so require.

Cf. 1968, No. 63, s. 31

40. Costs—Subject to any rules of procedure made for the purposes of this Act, in any proceedings under this Act the Court may make such order as to costs as it thinks fit.

41. Registration of orders—(1) Where an order made under this Act relates to any estate or interest in land, a copy of the order sealed with the seal of the Court shall, upon application by either of the parties and upon payment of the prescribed fee, be registered by the District Land Registrar or the Registrar of Deeds, as the case may be, or by the Mining Registrar in any case where the order relates to land comprised in a licence within the meaning of the Mining Tenures Registration Act 1962 that has not been registered under the Land Transfer Act 1952.

(2) For the purposes of this section an order to which this section applies shall cease to have effect where—

(a) The order is discharged or cancelled by the Court under section 33 (2) of this Act; or

(b) The person in whose favour and the person against whom the order is made so agree in writing and the agreement is signed and witnessed in accordance with subsections (4) and (6) of section 21 of this Act; or

(c) The period for which the order was made has expired; or

(d) The Court so directs in any other case.

(3) Where the District Land Registrar or the Registrar of Deeds or the Mining Registrar, as the case may be, is satisfied that an order registered under subsection (1) of this section has ceased to have effect, he shall, on application in that behalf, endorse the register accordingly.

(4) Where an order made under any of the provisions of this Act relates to any stocks, shares or other company securities, or to any other property the title to which passes upon or is evidenced by registration, the foregoing provisions of this section shall apply with all necessary modifications to such stocks, shares, securities or other property as if they were estates or interests in land.

Cf. 1963, No. 71, ss. 57 (9), (10), (11), 59 (4)

Protection of Spouses' Rights

42. Notice of interest against title—(1) A claim to an interest, pursuant to this Act, in any land subject to the Land Transfer Act 1952 shall be deemed to be a registrable interest for the purposes of that Act.

(2) Notice of a claim under subsection (1) of this section shall be effected by lodging a duly completed notice in the form set out in the First Schedule to this Act with the District Land Registrar.

(3) Every notice so lodged shall have effect as if it were a caveat in Form N in the Second Schedule to the Land Transfer Act 1952 lodged pursuant to section 137 of that Act and the provisions of that Act shall apply accordingly except that—

- (a) Any application under section 143 or section 145 of that Act in respect of any notice under this section may be made to either a Magistrate's Court or the Supreme Court; and
- (b) An order under section 148 of that Act authorising the receipt of a second notice under this section may be made by a Magistrate's Court or the Supreme Court.

(4) In the case of land that is not subject to the Land Transfer Act 1952, notice of a claim to an interest pursuant to this Act may be registered in the manner in which deeds and other instruments affecting the land may be registered.

(5) A notice under subsection (2) or subsection (4) of this section may be registered notwithstanding that no proceedings under this Act are pending or in contemplation, and notwithstanding that there is no dispute between the parties.

43. Dispositions may be restrained—(1) Where it appears to the Court that any disposition of property is about to be made, whether for value or not, by or on behalf of or by direction of or in the interests of any person in order to defeat the claim or rights of any other person under this Act, the Court may, on the application of that second-named person and on such notice being given as the Court may direct, by order restrain the making of the disposition or may order any proceeds of the disposition to be paid into Court to be dealt with as the Court directs.

(2) Any disposition made after an order of the Court under subsection (1) of this section restraining the making of the disposition has been served on or come to the notice of the person disposing of the property, or any auctioneer, agent, or solicitor acting in connection with the disposition, shall be void, and the Court may consider any claim of any person interested and may make such order as it thinks just.

Cf. 1963, No. 71, s. 80

44. Dispositions may be set aside—(1) Where the Court is satisfied that any disposition of property has been made, whether for value or not, by or on behalf of or by direction

of or in the interests of any person in order to defeat the claim or rights of any person under this Act, the Court may, on the application of that second-named person, make any order under subsection (2) of this section.

(2) In any case to which subsection (1) of this section applies, the Court may, subject to subsection (4) of this section,—

- (a) Order that any person to whom the disposition was made and who received the property otherwise than in good faith and for valuable consideration, or his personal representative, shall transfer the property or any part thereof to such person as the Court directs; or
- (b) Order that any person to whom the disposition was made and who received the property otherwise than in good faith and for adequate consideration, or his personal representative, shall pay into Court, or to such person as the Court directs, a sum not exceeding the difference between the value of the consideration (if any) and the value of the property; or
- (c) Order that any person who has, otherwise than in good faith and for valuable consideration, received any interest in the property from the person to whom the disposition was so made, or his personal representative, or any person who received that interest from any such person otherwise than in good faith and for valuable consideration, shall transfer that interest to such person as the Court directs, or shall pay into Court or to such person as the Court directs a sum not exceeding the value of the interest.

(3) For the purposes of giving effect to any order under subsection (2) of this section, the Court may make such further order as it thinks fit.

(4) Relief (whether under this section, or in equity, or otherwise) in any case to which subsection (1) of this section applies shall be denied wholly or in part, if the person from whom relief is sought received the property or interest in good faith, and has so altered his position in reliance on his having an indefeasible interest in the property or interest that in the opinion of the Court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.

Cf. 1963, No. 71, s. 81

45. Family chattels not to be disposed of—(1) Where proceedings are pending under this Act, no party knowing that the proceedings are pending shall, without the leave of a Judge or a Magistrate or a Registrar, or the consent in writing of the other party, sell, charge, or dispose of any of the family chattels or (except in an emergency) remove from the matrimonial home or homes any of the family chattels which are household appliances or effects or which form part of the furniture of that home or those homes.

(2) Any person who does any act in contravention of the provisions of this section commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$400, or to both.

Cf. 1968, No. 62, s. 43; 1971, No. 59, s. 7

Protection of Creditors

46. Protection of mortgagee—Subject to the provisions of sections 42 to 44 of this Act, the rights conferred on the husband or wife by any order made under this Act shall be subject to the rights of the persons entitled to the benefit of any mortgage, security, charge, or encumbrance affecting the property in respect of which the order is made if it was registered before the order was registered or if the rights of that person arise under an instrument executed before the date of the making of the order:

Provided that, notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge, or encumbrance shall be called up or become due by reason of the making of any such order, not being an order directing the sale of any property.

Cf. 1963, No. 72, s. 8; 1968, No. 61, s. 10

47. Agreements to defeat creditors void—(1) Notwithstanding anything in this Act, but subject to the provisions of subsection (2) of this section, any agreement, disposition, or other transaction between the husband and the wife with respect to their matrimonial property and intended to defeat creditors of either spouse shall be void against those creditors and the Official Assignee, and any such agreement, disposition, or other transaction which is not so intended but which has the effect of defeating such creditors shall be void against such creditors and the Official Assignee during the period of 2 years after its making.

(2) Nothing in this section shall apply to any gift by one spouse to the other spouse, if the gift is made upon a customary occasion and is reasonable in amount having regard to the donor's means and liabilities.

Miscellaneous Provisions

48. Incidence of orders against personal representative of spouse—(1) The incidence of any order made under this Act by the Court against the personal representative of a deceased husband or wife shall fall rateably upon such part of the estate of the deceased as consists of matrimonial property:

Provided that the Court may order that the incidence of the order—

- (a) Shall fall rateably on the whole estate of the deceased;
or
- (b) Shall fall upon any specified portion of the estate or upon any specified property.

(2) Where the Court makes any order under the proviso to subsection (1) of this section—

- (a) The Court shall have power to exonerate any part of the estate of the deceased from the incidence of the order made under this Act, after hearing such of the parties who may be affected by the exoneration as the Court thinks necessary, and may for that purpose direct any personal representative to represent, or appoint any person to represent, any such party:

- (b) The Court shall have power at any time to fix a periodical payment or lump sum to be paid by any beneficiary in the estate of the deceased to represent, or in commutation of, any liability under the order that falls upon the portion of the estate in which he is interested, and to exonerate that portion from further liability and to direct in what manner the payment shall be secured.

(3) For the purposes of subsections (1) and (2) of this section, in cases where the authority of the Court does not extend and cannot directly or indirectly be made to extend to the whole estate, the estate of the deceased shall include only so much thereof as is subject to the authority of the Court.

(4) Where the Court makes any order under this Act against the personal representative of a deceased husband or wife (other than an order made under section 27 or section

28 of this Act) the property comprised in that order shall not form part of the estate of the deceased for the purposes of the Estate and Gift Duties Act 1968 or of the Family Protection Act 1955.

Cf. 1963, No. 72, s. 8A; 1968, No. 61, s. 11

49. Legal capacity of married women—(1) Except as provided in any enactment, the rights, privileges, powers, capacities, duties, and liabilities of a married woman shall, for all the purposes of the law of New Zealand (whether substantive, procedural, or otherwise), be the same in all respects as those of a married man, whether she is acting in a personal, official, representative, or fiduciary capacity.

(2) This section shall apply to every married woman whether she was married before or after the commencement of this Act, and whether the marriage was solemnised in New Zealand or not, and whether she is or was at any relevant time domiciled in New Zealand or not.

50. No restraints upon anticipation—As from the commencement of this Act, no restriction upon anticipation or alienation attached to the enjoyment of any property, being a restriction preserved by section 4 of the Married Women's Property Act 1952, shall be operative or have any effect.

51. Proceedings in tort—(1) Subject to this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were unmarried.

(2) Where one of the parties to a marriage brings an action in tort against the other during the subsistence of the marriage, the Court may at any stage of the proceedings, on application or of its own motion, stay the action if it appears that—

(a) No substantial benefit, whether material or otherwise, would accrue to either party by the continuation of the proceedings; or

(b) The proceedings are vexatious in character; or

(c) The question or questions in issue could more conveniently be disposed of on an application made under this Act.

(3) Without limiting the provisions of subsection (2) (c) of this section, the Court may in any such action exercise any power which could be exercised on an application under this Act or give such directions as it thinks fit for the disposal under this Act of any question arising in the proceedings.

(4) In an action to which this section applies, judgment

by default shall not be entered except with the leave of the Court. An application for the grant of such leave must be served on the defendant.

Cf 1963, No. 72, s. 4 (1)–(4)

52. Minors may apply without guardian *ad litem*—Notwithstanding any enactment or rule of law, a minor who is or has been married may bring, institute, or defend proceedings under this Act without a guardian *ad litem* or next friend, and every judgment or order of the Court under this Act shall be binding upon and may be enforced against such a minor as if he or she were of full age.

53. Rules of Court and regulations—(1) Rules may from time to time be made in the manner prescribed by the Judicature Act 1908 relating to the procedure of the Supreme Court under this Act and to appeals to the Court of Appeal under this Act.

(2) The Governor-General may from time to time, by Order in Council, make regulations under section 100A of the Judicature Act 1908 for the purposes of this Act.

(3) In addition to all other powers conferred by the Magistrates' Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules under that Act providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(4) In the absence of any rules under this section or in any situation not covered by any such rules, the rules in relation to civil proceedings for the time being in force under the Magistrates' Courts Act 1947 or the Judicature Act 1908, as the case may require, shall apply, with all necessary modifications, to proceedings under this Act.

54. Exemption from stamp duty—Section 11 (2) of the Stamp and Cheque Duties Act 1971 is hereby amended by adding the following paragraph:

“(o) The Matrimonial Property Act 1976.”

55. Transitional provision—(1) Notwithstanding the provisions of section 21 of this Act, but subject to section 57 (5) of this Act, where any application under this Act relates to the matrimonial property of any marriage that took place before the commencement of this Act, the Court shall, in

dealing with that application, have regard to any agreement entered into before the commencement of this Act by the parties to that marriage.

(2) Where proceedings have been filed under the Matrimonial Property Act 1963 or Part VIII of the Matrimonial Proceedings Act 1963 and the hearing of those proceedings has commenced before the commencement of this Act, the proceedings shall be continued as if this Act had not been passed unless the parties agree to the proceedings being continued under this Act.

(3) Where proceedings have been filed under the Matrimonial Property Act 1963 or Part VIII of the Matrimonial Proceedings Act 1963 but the hearing of those proceedings has not commenced before the commencement of this Act, those proceedings shall be continued under this Act.

56. Consequential amendments—The enactments specified in the Second Schedule to this Act are hereby amended in the manner indicated in that Schedule.

57. Repeals and savings—(1) The enactments specified in the Third Schedule to this Act are hereby repealed.

(2) Nothing in this Act shall affect any order made before the commencement of this Act under section 41 or section 44 of the Matrimonial Proceedings Act 1963, and the provisions of that Act shall have effect in relation to any such order as if this Act had not been passed.

(3) Nothing in this Act shall invalidate any payment made or any act or thing done in good faith before the commencement of this Act by the personal representative of a deceased husband or wife.

(4) Nothing in this Act shall affect any right that a widow or widower has to bring proceedings under any enactment, whether that right arises before or after the commencement of this Act, and, for the purposes of section 5 (1) of this Act and of any such proceedings, every enactment (including the Matrimonial Property Act 1963 and Part VIII of the Matrimonial Proceedings Act 1963) shall continue to operate and apply as if this Act had not been passed.

(5) Nothing in this Act shall affect the validity of any agreement entered into before the commencement of this Act by way of settlement of any question that has arisen in relation to matrimonial property and every such agreement shall have effect as if this Act had not been passed.

SCHEDULES

Section 42 (2)

FIRST SCHEDULE

NOTICE OF CLAIM OF INTEREST UNDER MATRIMONIAL PROPERTY ACT
To the District Land Registrar of the District of
TAKE NOTICE

(1) That I [*Name of claimant*] of [*Address and occupation*] am the wife [*or husband*] of [*Name of spouse*] of [*Address and occupation*] who is registered as a proprietor of [*Here state the nature of the estate or interest*] in the land described in the Schedule hereto, and I annex hereto a certificate of my marriage to the said [*Name of spouse*].

(2) That, pursuant to the Matrimonial Property Act 1976, I claim an interest in the said estate by virtue of my marriage to the said [*Name of spouse*].

And I appoint [*Here state an address within the registration district*] as the place at which notices relating hereto may be served.

Dated this day of 19

Signed by the above-named, A.B., as claimant, in the presence of—
C.D.,

[*Occupation and address*]

SCHEDULE

[*Here describe land*]

SECOND SCHEDULE

Section 56

CONSEQUENTIAL AMENDMENTS

Enactment Amended	Amendment
1908, No. 105—The Life Insurance Act 1908. (1957 Reprint, Vol. 8, p. 335)	<p>By inserting, after section 75 (as substituted by section 17 (1) of the Minors' Contracts Act 1969), the following heading and section:</p> <p style="text-align: center;"><i>“Insurances by Married Women</i></p> <p>“75A. Wife may insure her own or her husband’s life for her own benefit—</p> <p>(1) A married woman may effect a policy on her own life or the life of her husband for her own benefit; and the policy and all benefit thereof shall enure accordingly.</p> <p>“(2) A policy of insurance effected by any man on his own life, and expressed to be for the benefit of his wife or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named; and the money payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts:</p> <p>“Provided that if it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the money payable under the policy, a sum equal to the premiums so paid.</p> <p>“(3) The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the money payable under the policy, and from time to time appoint a new trustee or new trustees thereof; and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the money payable under any such policy.</p>

SECOND SCHEDULE—*continued*
CONSEQUENTIAL AMENDMENTS—*continued*

Enactment Amended	Amendment
<p>1908, No. 105—The Life Insurance Act 1908. (1957 Reprint, Vol. 8, p. 335)—<i>continued</i></p>	<p>“(4) In any default of any such appointment of a trustee, the policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid.</p> <p>“(5) If at the time of the death of the insured, or at any time afterwards, there is no trustee, or it is expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any Court having jurisdiction under the provisions of the Trustee Act 1956.</p> <p>“(6) The receipt of a trustee or trustees duly appointed, or, in default of any such appointment or in default of notice to the insurance office, the receipt of the legal personal representative of the insured, shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.”</p> <p style="text-align: center;">Cf. 1952, No. 53, s. 17</p>
<p>1952, No. 51—The Property Law Act 1952. (Reprinted 1970, Vol. 3, p. 2290)</p>	<p>By inserting, after section 134, the following section:</p> <p>“134A. Competency of married minors—A minor who is or has been married may, as if he were of full age, by deed appoint an attorney on his behalf for the purpose of executing any deed, or making any appointment otherwise than by will, or doing any other act he might himself execute or do.”</p>
<p>1963, No. 71—The Matrimonial Proceedings Act 1963</p>	<p>By omitting from section 43 the words “or section 41”.</p> <p>By repealing section 44, and substituting the following section:</p> <p>“44. Maintenance of husband—(1) The Court, on or at any time after making any decree of divorce, if it is satisfied that the husband is unable by his own means or labour to support himself, may, if it thinks fit, order the wife to pay to the husband such periodical sum for his maintenance and support for such term not exceeding her life, and on such conditions as the Court thinks reasonable.</p>

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS—*continued*

Enactment Amended	Amendment
1963, No. 71—The Matrimonial Proceedings Act 1963— <i>continued</i>	<p>“(2) In considering any application for an order under subsection (1) of this section, the Court shall have regard to—</p> <p>“(a) The means and responsibilities of the wife; and</p> <p>“(b) The conduct of the parties; and</p> <p>“(c) The length of time (if any) that has elapsed since the making of the decree; and</p> <p>“(d) Any other circumstances which the Court thinks relevant.</p> <p>“(3) Subject to any agreement to the contrary, any order under this section for the payment of a periodical sum, and any order under section 47 of this Act extending or varying any such order, shall cease to have effect if the husband marries again.”</p> <p>By omitting from section 45 (1) the words “or any order under section 41 or section 44 of this Act for the payment of a capital sum”, and also the words “or capital”.</p> <p>By omitting from section 46 the words “or until any order under Part VIII of this Act (which relates to the matrimonial home) has been complied with”.</p> <p>By omitting from section 47 (2) the words “or section 41”.</p> <p>By repealing section 76 (as amended by section 9 of the Matrimonial Proceedings Amendment Act 1968), and substituting the following section:</p> <p>“76. Recovery of money from estate of deceased party—(1) On the death of any person against whom an order for the payment of money has been made under this Act, any money in arrear and unpaid at the time of his death shall constitute a debt recoverable out of his estate:</p> <p>“Provided that, except where the order has been made to bind the personal representative of the deceased person, no such arrears in respect of a period longer than one year shall be so recoverable without</p>

SECOND SCHEDULE—*continued*
 CONSEQUENTIAL AMENDMENTS—*continued*

Enactment Amended	Amendment
<p>1963, No. 71—The Matrimonial Proceedings Act 1963—<i>continued</i></p>	<p>the leave of the Court, which may be given on such terms and subject to such conditions as the Court thinks fit.</p> <p>“(2) Where, by any order made under section 40 or section 52 of this Act, whether before or after the commencement of this subsection, a personal representative is liable to pay any periodical sum in respect of any period after the death of the deceased, the amount so payable by the personal representative under the order, or, where there are two or more such orders, under all those orders, shall constitute a debt recoverable out of the estate of the deceased, but all other debts payable out of the estate shall rank in priority thereto. For the purposes of this subsection, an order made under section 47 (2) of this Act varying or extending any order under section 40 of this Act shall be deemed to be an order under the said section 40.</p> <p>“(3) Nothing in subsection (2) of this section shall affect any security given, pursuant to an order under this Act, for the payment of any periodical sum or the rights of any person in respect of that security.</p> <p>“(4) Where the estate of the deceased is insufficient for the payment in full of the amounts so payable under two or more orders to which subsection (2) of this section applies, so much of the estate as is available for payment of those amounts shall be applied in payment rateably of the amounts so payable under the several orders.</p> <p>“(5) Nothing in this section shall restrict the power of the Court to make in respect of any order to which this section applies an order under section 47 of this Act after the death of the person liable under the first-mentioned order.”</p> <p>By omitting from section 78 the words “or Part VIII” in both places where they appear.</p>

SECOND SCHEDULE—*continued*
 CONSEQUENTIAL AMENDMENTS—*continued*

Enactment Amended	Amendment
1963, No. 71—The Matrimonial Proceedings Act 1963— <i>continued</i>	<p>By adding to section 79 the following sub-section:</p> <p style="padding-left: 2em;">“(5) The Court shall not exercise its powers under this section so as to defeat or vary any agreement, entered into under section 21 of the Matrimonial Property Act 1976, between the parties to the marriage unless it is of the opinion that the interests of any child of the marriage so require.”</p> <p>By omitting from section 80 (1), and also from section 81 (1), the words “Part VII, or Part VIII”, and substituting in each case the words “or Part VII”.</p>
1968, No. 62—The Domestic Proceedings Act 1968	<p>By omitting from the definition of the term “final order for maintenance” in section 80 (4) the words “or the payment of a capital sum”.</p> <p>By omitting from section 117 (1) the words “section 5 of the Matrimonial Property Act 1963”, and substituting the words “the Matrimonial Property Act 1976”.</p>

Section 57

THIRD SCHEDULE

ENACTMENTS REPEALED

- 1952, No. 51—The Property Law Act 1952: Section 133. (Reprinted 1970, Vol 3, p. 2290.)
- 1952, No. 53—The Married Women's Property Act 1952. (1957 Reprint, Vol. 9, p. 395.)
- 1955, No. 63—The Companies Act 1955: Section 216. (Reprinted 1968, Vol. 3, p. 1759.)
- 1963, No. 71—The Matrimonial Proceedings Act 1963: Sections 12 (4), 41, and 43 (c) and Part VIII.
- 1963, No. 72—The Matrimonial Property Act 1963. (Reprinted 1971, Vol. 4, p. 2521.)
- 1966, No. 72—The Matrimonial Property Amendment Act 1966. (Reprinted 1971, Vol. 4, p. 2530.)
- 1967, No. 93—The Matrimonial Property Amendment Act 1967. (Reprinted 1971, Vol. 4, p. 2530.)
- 1968, No. 60—The Matrimonial Proceedings Amendment Act 1968. Sections 6 to 9.
- 1968, No. 61—The Matrimonial Property Amendment Act 1968. (Reprinted 1971, Vol. 4, p. 2530.)
- 1968, No. 62—The Domestic Proceedings Act 1968: Sections 24 (4), 26 (1) (c), and 31 (1) (c) and Part V.
- 1969, No. 41—The Minors' Contracts Act 1969: So much of the First Schedule as relates to the Property Law Act 1952.
- 1970, No. 137—The Age of Majority Act 1970: So much of the First Schedule as relates to section 133 (2) of the Property Law Act 1952.
- 1971, No. 25—The Mining Act 1971: Section 247 (2) (g).
- 1971, No. 59—The Domestic Proceedings Amendment Act 1971: Section 7.

This Act is administered in the Department of Justice.
