



ANALYSIS

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| <p><i>Title.</i></p> <ol style="list-style-type: none"> 1. Short Title and commencement. 2. Interpretation. <p><i>Capacity</i></p> <ol style="list-style-type: none"> 3. Capacity of married women. <p><i>Property Generally</i></p> <ol style="list-style-type: none"> 4. Property of married women. 5. Stock, &c., to which a married woman is entitled. 6. Stock, &c., to be transferred, &c., to a married woman. 7. Investments in joint names of married women and others. 8. Stock, &c., standing in joint names of a married woman and others. 9. Remedies of married woman for protection and security of her property. 10. Wife's ante-nuptial debts and liabilities. 11. Will of married woman. 12. Legal representative of married woman. 13. Power of attorney of married woman. <p><i>Provisions Specially Applying Between Husband and Wife</i></p> <ol style="list-style-type: none"> 14. Abolition of husband's liability for wife's torts and ante-nuptial contracts, debts, and obligations. 15. Loans by wife to husband, and by husband to wife. | <ol style="list-style-type: none"> 16. Fraudulent investments with money of husband. 17. Wife may insure her own or her husband's life for her own benefit. 18. Act of wife liable to criminal proceedings. 19. Disputes between husband and wife as to property to be decided in a summary way. <p><i>Property Subject to Restraint on Anticipation or Alienation</i></p> <ol style="list-style-type: none"> 20. Avoidance of restrictions upon anticipation or alienation. 21. Saving of existing settlements, and power of making future settlements. 22. Court may bind interest of married woman. 23. Costs may be ordered to be paid out of property subject to restraint on anticipation. <p><i>Property Held in a Representative Capacity</i></p> <ol style="list-style-type: none"> 24. Liability of married woman to extend to her trust estate. 25. Married woman as executrix or trustee. <p><i>Savings and Repeals</i></p> <ol style="list-style-type: none"> 26. Savings of the Law Reform Act 1936. 27. Repeals and savings. Schedule. |
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1952, No. 53

AN ACT to consolidate certain enactments relating to the Title.
property, personal capacity, and liabilities of married
women.

[23 October 1952]

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

1. This Act may be cited as the Married Women's Property Act 1952, and shall come into force on the first day of January, nineteen hundred and fifty-three.

2. In this Act, unless the context otherwise requires,—

“Contract” includes the acceptance of any trust or the office of executrix or administratrix:

“Property” includes a thing in action:

“Unmarried”, in relation to a woman, means unmarried for the time being, whether or not she has been married.

Short Title and commencement.

Interpretation.
1908, No. 114,
s. 2

Capacity

3. Subject to the provisions of this Act, and subject as respects actions in tort between husband and wife to the provisions of section nine hereof, a married woman shall—

Capacity of
married women.
1936, No. 31,
s. 12

- (a) Be capable of acquiring, holding, and disposing of any property; and
 - (b) Be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligation; and
 - (c) Be capable of suing and being sued either in tort or in contract or otherwise; and
 - (d) Be subject to the law relating to the enforcement of judgments and orders,—
- in all respects as if she were unmarried.

Property Generally

4. (1) Subject to the provisions of this Act, all property which—

Property of
married women.
Ibid., s. 13 (1),
(3)

- (a) Immediately before the eighteenth day of September, nineteen hundred and thirty-six (being the date of the passing of the Law Reform Act 1936), was the separate property of a married woman or held for her separate use in equity; or

1936, No. 31

- (b) Belonged or belongs at the time of her marriage to a woman married after the date last aforesaid; or
- (c) After the date last aforesaid has been or hereafter is acquired by or devolves upon a married woman,—

shall belong to her in all respects as if she were unmarried, and may be disposed of accordingly:

Provided that nothing in this subsection shall interfere with or render inoperative any restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of any provision attaching such a restriction, contained in any Act passed before the date last aforesaid, or in any instrument executed before the first day of January, nineteen hundred and thirty-seven.

(2) For the purposes of the provisions of this section relating to restrictions upon anticipation or alienation—

- (a) An instrument attaching such a restriction as aforesaid executed on or after the first day of January, nineteen hundred and thirty-seven, in pursuance of an obligation imposed before that date to attach such a restriction, shall be deemed to have been executed before that date:

- (b) A provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument only and not in the instrument by which the power was created:

- (c) The will of any testator who has died after the thirty-first day of December, nineteen hundred and forty-six, or hereafter dies shall (notwithstanding the actual date of the execution thereof) be deemed to have been executed after the first day of January, nineteen hundred and thirty-seven.

5. (1) All deposits in any Post Office or other savings bank, or in any other bank, all annuities, and all sums forming part of the public stocks or funds of New Zealand, or of any other stocks or funds transferable in the books of any bank, which on the first day of January, eighteen hundred and eighty-five (being the date of the commencement of the Married Women's Property Act

1884), were standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which on that date were standing in her name, shall be deemed, unless and until the contrary is shown, to be the property of that married woman.

(2) The fact that any such deposit, annuity, sum forming part of the public stocks or funds of New Zealand, or of any other stocks or funds transferable in the books of any bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify any person whomsoever, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

6. (1) All sums forming part of the public stocks or funds of New Zealand, or of any other stocks or funds transferable in the books of any bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which on or after the date last aforesaid have been or are allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman, shall be deemed, unless and until the contrary is shown, to be her property, in respect of which so far as any liability may be incident thereto she shall alone be liable.

Stock, &c., to be transferred, &c., to a married woman.

1908, No. 114,
s. 12
1936, No. 31,
s. 16 (1)

(2) Nothing in this Act shall require or authorize any corporation or company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act, charter, by-law, articles of association, or deed of settlement regulating that corporation or company.

Investments in joint names of married women and others.

1908, No. 114,
s. 13

Stock, &c., standing in joint names of a married woman and others.

Ibid., s. 14

Remedies of married woman for protection and security of her property.

Ibid., s. 17
1936, No. 31,
s. 16 (1)

7. All the provisions of sections five and six hereof shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars mentioned in those sections which at the date last aforesaid or at any time afterwards were or are standing in, or allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

8. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds of New Zealand, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which was or is at any time on or after the date last aforesaid standing in the sole name of any married woman, or in the joint names of a married woman and any other persons or person not being her husband.

9. (1) Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own property as if she were unmarried, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort:

Provided that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act, while they are living together, as to or concerning any property claimed by her, nor, while they are living apart, as to or concerning any act done by the husband, while they were living together, concerning property claimed by the wife, unless that property has been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

(2) In any indictment or other proceeding under this section it shall be sufficient to allege any such property to be her property.

10. (1) A woman after her marriage—

- (a) Shall continue to be liable for all debts contracted and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory either before or after she has been placed on the list of contributories under and by virtue of any Act relating to companies; and
- (b) May be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong.

Wife's ante-nuptial debts and liabilities.
1908, No. 114, s. 20
1936, No. 31, s. 16 (1)

See Reprint of Statutes, Vol. III, p. 851

(2) Nothing in this Act shall operate to increase or diminish the liability of any woman married before the first day of January, eighteen hundred and eighty-five, for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she became entitled by virtue of the Married Women's Property Act 1884 or the Married Women's Property Act 1908, or to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use if those Acts and this Act had not been passed.

11. Section twenty-four of the United Kingdom Act shortly intituled the Wills Act 1837 shall apply to the will of a married woman made while she is married, whether she is or is not possessed of or entitled to any separate property at the time of making it; and no such will shall require to be re-executed or republished after the death of her husband.

Will of married woman.
1908, No. 114, s. 27
7 Will. IV and 1 Vict., c. 26

12. For the purposes of this Act the legal personal representative of any married woman shall in respect of her property have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

Legal representative of married woman.
1908, No. 114, s. 28
1936, No. 31, s. 16 (1)

1908, No. 152, s. 112 (2)

13. A married woman, whether married before or after the commencement of the Married Women's Property Act 1884, and whether a minor or not, may, as if she were unmarried and of full age, by deed appoint an attorney on her behalf for the purpose of executing any deed, or making any appointment otherwise than by will, or doing any other act she might herself execute or do.

Power of attorney of married woman.
1908, No. 152, s. 112 (2)

*Provisions Specially Applying Between Husband
and Wife*

Abolition of
husband's
liability for
wife's torts and
ante-nuptial
contracts,
debts, and
obligations.
1936, No. 31,
s. 14

Loans by wife
to husband,
and by husband
to wife.
1908, No. 114,
s. 8

Fraudulent
investments
with money
of husband.
Ibid., s. 15

14. Subject to the provisions of this Act, the husband of a married woman shall not, by reason only of his being her husband, be liable—

- (a) In respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or
- (b) To be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

15. (1) Any money or other property of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim as a creditor for the amount or value of that money or other property after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

(2) Any money or other property of the husband lent or entrusted by him to his wife for the purpose of any trade or business carried on by her, or otherwise, shall be treated as assets of his wife's estate in case of her bankruptcy, under reservation of the husband's claim as a creditor for the amount or value of that money or other property after, but not before, all claims of the other creditors of the wife for valuable consideration in money or money's worth have been satisfied.

16. (1) If any investment in any such deposit or annuity as is mentioned in sections five to eight hereof, or in any of the public stocks or funds of New Zealand, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, is made by a married woman by means of moneys of her husband without his consent,

the Court may, on application under section nineteen hereof, order that investment and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband.

(2) Nothing in this Act shall give validity as against creditors of the husband to any gift by a husband to his wife of any property which after that gift continues to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

17. (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.

(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 moneys 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:

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 moneys payable under the policy, a sum equal to the premiums so paid.

(3) The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys 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 moneys payable under any such policy.

(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.

Wife may
insure her own
or her
husband's life
for her own
benefit.

1908, No. 114,
s. 16

1936, No. 31,
s. 16 (1)

See Reprint
of Statutes,
Vol.VIII,
p. 873

Act of wife
liable to
criminal
proceedings.
1908, No. 114,
s. 18

Disputes
between
husband and
wife as to
property to be
decided in a
summary way.
Ibid., s. 23

(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 1908.

(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.

18. A wife doing any act with respect to any property of her husband which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act shall in like manner be liable to criminal proceedings by her husband.

19. (1) In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any Judge of the Supreme Court, or, if the value of the property in dispute is within the limits of the jurisdiction of an inferior Court, to such Court; and the Judge or Court hearing any such application may make such order with respect to the property in dispute, and as to the costs of and consequent upon the application, as he or it thinks fit, or may direct the application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he or it thinks fit; and may, if either party so require, hear the application in a private room.

(2) Any order made under this section shall be subject to appeal in the same way as any order made by the same Judge or Court in an action pending in the Supreme Court or other Court respectively would be.

(3) In the matter of any application under this section any such bank, corporation, company, public body, or society as aforesaid shall, for the purposes of costs or otherwise, be treated as a stakeholder only.

Property Subject to Restraint on Anticipation or Alienation

20. (1) Any instrument executed on or after the first day of January, nineteen hundred and thirty-seven, shall, in so far as it purports to attach to the enjoyment of any property by a woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void.

Avoidance of restrictions upon anticipation or alienation.
1936, No. 31, s. 13 (2)

(2) For the purposes of this section the provisions of subsection two of section four hereof shall apply.

21. (1) Subject to the last preceding section, nothing in this Act—

(a) Shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman; or

Saving of existing settlements, and power of making future settlements.
1908, No. 114, s. 25

(b) Shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument.

(2) No restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage.

(3) And no settlement or agreement for a settlement shall have any greater force or validity against creditors of such a woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

22. Notwithstanding that a married woman is restrained from anticipation, the Supreme Court may, where it appears to be for her benefit, by judgment or order, with her consent, bind her interest in any property, including 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.

Court may bind interest of married woman.
1908, No. 152, s. 112 (1)

Costs may be ordered to be paid out of property subject to restraint on anticipation.
1908, No. 114, s. 26

Liability of married woman to extend to her trust estate.
Ibid., s. 3

Married woman as executrix or trustee.
Ibid., s. 24

Savings of the Law Reform Act 1936.
1936, No. 31, s. 15

23. In any action or proceeding now or hereafter instituted by a woman or by a next friend on her behalf, the Court before which the action or proceeding is pending shall have jurisdiction by judgment or order from time to time to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce the payment by the appointment of a Receiver, and the sale of the property, or otherwise as may be just.

Property Held in a Representative Capacity

24. The provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or any *devastavit* committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to any such liabilities unless he has acted or intermeddled in the trust or administration.

25. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds of New Zealand, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were unmarried.

Savings and Repeals

26. (1) Nothing in this Act shall—

(a) During coverture which began before the first day of January, eighteen hundred and eighty-five (being the date of the commencement of the Married Women's Property Act 1884), affect any property to which the title (whether vested or contingent, and whether in possession, reversion, or remainder) of a married woman accrued before that date, except property held for her separate use in equity:

- (b) Affect any legal proceeding in respect of any tort if proceedings had been instituted in respect thereof before the eighteenth day of September, nineteen hundred and thirty-six (being the date of the passing of the Law Reform Act 1936),^{1936, No. 31}
- (c) Enable any judgment or order against a married woman in respect of a contract entered into or debt or obligation incurred before the date last aforesaid to be enforced otherwise than against her property.
- (2) Nothing in this Act shall be construed—
- (a) To render the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this Act had not been passed:
- (b) To exempt the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred, by her after the marriage in respect of which he would have been liable if this Act had not been passed:
- (c) To prevent a husband and wife from acquiring, holding, and disposing of any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt, or obligation, and of suing and being sued, either in tort or in contract or otherwise, in like manner as if they were not married:
- (d) To prevent the exercise of any joint power given to a husband and wife.

27. (1) The enactments specified in the Schedule hereto are hereby repealed.

Repeals and savings.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall

See Reprint of Statutes, Vol. VIII, p. 568

continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

Schedule.**SCHEDULE****Section 27 (1)****ENACTMENTS REPEALED****1908, No. 114—**

The Married Women's Property Act 1908. (Reprint of Statutes, Vol. III, p. 851.)

1908, No. 152—

The Property Law Act 1908: Section 112. (Reprint of Statutes, Vol. VII, p. 1127.)

1936, No. 31—

The Law Reform Act 1936: Sections 11 to 15, subsection (1) of section 16, and the Schedule.

1939, No. 39—

The Statutes Amendment Act 1939: Section 42.