

MATRIMONIAL PROPERTY BILL

EXPLANATORY NOTE

THE main object of this Bill is to secure a fairer division of the matrimonial property upon the break-up of a marriage.

The Bill had its origins in the report of a Special Committee on the Matrimonial Property Act 1963. This report was presented to the Minister of Justice in June 1972.

The policy embodied in the Bill is set out in a White Paper being published contemporaneously with the introduction of this Bill. This White Paper is entitled *Matrimonial Property—Comparable Sharing*.

Important features of the Bill are as follows:

- (a) The provisions of the Bill are to apply only during the joint lifetime of both spouses.
- (b) Matrimonial property is divided into two classes, namely domestic assets and general assets.
- (c) Domestic assets (which include the matrimonial home or homes and the family chattels) are to be shared equally between the spouses except in certain specified circumstances.
- (d) The share of each spouse in the general assets upon the division of the matrimonial property is to be a matter for agreement between the husband and the wife or if they are unable to agree, is to be, in general, proportionate to the respective contributions of the husband and the wife to those assets. What constitutes a contribution is widely defined by the provisions of *clause 14*. The definition takes in much more than monetary contributions.
- (e) A husband and wife, or any two persons in contemplation of marriage, may contract out of the Act by entering into an agreement with respect to the status, ownership, and division of their property. Special requirements with regard to such agreements are prescribed by *clause 15*.
- (f) The share of one spouse in the matrimonial property will not be subject to the purely personal creditors of the other spouse, but the whole of the matrimonial property will be liable for debts incurred jointly or in the course of managing the common household or a common enterprise.
- (g) Each spouse will be free to deal with his or her own property during the marriage, subject to safeguards where financial irresponsibility is endangering the interest that the other spouse has in the property.

- (h) The Courts are given power to make a wide variety of orders, including orders settling property for the benefit of children of the marriage.
- (i) Nothing in the Bill applies in respect of any Maori land within the meaning of the Maori Affairs Act 1953.
- (j) Certain rights, including the right to make an application under *clause 18*, are conferred on *de facto* spouses by *clauses 16 and 49*.
- (k) The Married Women's Property Act 1952 is repealed. Two of its provisions are preserved. Section 13 dealing with powers of attorney is transferred, in an amended form, to the Property Law Act 1952. Section 17 dealing with life insurance is transferred to the Life Insurance Act 1908.

Clause 1 relates to the Short Title and commencement. The Act is to come into force on the 1st day of January 1977.

Clause 2: Subclause (1) defines terms used in the Bill. The most important of these are the terms "family chattels", "homestead", "matrimonial home", and "separate property". The key terms "domestic assets", "general assets", and "matrimonial property" are defined in *clauses 8 and 9*.

Subclause (2) declares that for the purposes of the Act the value of any property to which an application under the Act relates shall, subject to *clause 15*, be its value as at the date of the application.

Subclause (3) provides that for the purposes of the Act the share of a spouse in the matrimonial property shall, subject to *clause 15* of the Bill, be determined as at the date on which the parties cease 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.

Clause 3 provides that the Act is to bind the Crown.

Clause 4: Subclause (1) provides that the Act is to be a code.

Subclause (2) declares that every enactment shall, unless it or this Act otherwise expressly provides, be read subject to this Act.

Subclause (3) provides that 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.

Clause 5 provides that except as expressly provided in the Act, nothing in the Act is to apply after the death of either spouse.

Clause 6 excludes from the application of the Act Maori land within the meaning of the Maori Affairs Act 1953.

Clause 7 sets out the application of the Act to movables and immovables.

Clause 8 defines the term "matrimonial property".

Clause 9 defines the terms "domestic assets" and "general assets". Domestic assets include a number of things (such as the matrimonial home or homes and the family chattels) plus such other part of the matrimonial property as does not exceed \$10,000 in value. If the couple do not own a matrimonial

home this additional part of the matrimonial property which falls within the domestic assets is increased from a part not exceeding \$10,000 in value to a part not exceeding \$30,000 in value.

Where any matrimonial home is a homestead (as defined in *clause 2*), that matrimonial home shall not form part of the domestic assets but assets to the value of the homestead shall form part of the domestic assets. In the absence of any evidence to the contrary, the value of any such homestead is deemed to be \$20,000.

General assets comprise the whole of the matrimonial property other than the domestic assets.

The incidence of the entitlements by way of value under this clause may be determined by the Court but, in the absence of any order of the Court and of any agreement, that incidence is to fall rateably upon the whole of the general assets.

Substantive Rules of Matrimonial Property

Clause 10 provides, in general, that each spouse shall by virtue of this Bill and arising from his or her marriage to the other, have a present interest in the nature of an unsecured charge over the whole of the matrimonial property.

This interest does not 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 Bill had not been passed.

Clause 11: Subclause (1) provides that the interest that a spouse has in the matrimonial property by virtue of the Bill shall be liable for the payment of debts which are incurred by that spouse personally.

Subclause (2) provides that the whole of the matrimonial property shall be liable for debts which are incurred—

- (a) By the husband and 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) In the course of managing the affairs of the household or for the benefit of both the husband and the wife or of any child of the marriage.

Subclause (3) enables execution to be levied and judgments enforced against the family chattels for the purpose of recovering debts of the kind described in *subclause (2)*.

Subclauses (4) and (5) deal with the effects of bankruptcy. The interest of the husband or wife in the matrimonial property is, on his or her bankruptcy, to form part of the estate vesting in the Official Assignee; but, unless the Court otherwise orders in special circumstances, the bankruptcy of one spouse shall not have the effect of vesting in the Official Assignee the interest of the other spouse in the matrimonial property, or of making that interest available to the creditors of the bankrupt spouse.

Subclause (6) makes it clear that the rights of creditors in respect of the separate property of a husband or wife are not affected.

Subclause (7) deals with mortgages, charges, and other securities for the repayment of debts. Subject to *clauses 37, 39, 41, and 42*, such instruments are to have effect as if this Act had not been passed.

Subclause (8) declares that this clause does not derogate from the provisions of the Joint Family Homes Act 1964.

Subclause (9) ensures that this clause overrides section 55 of the Insolvency Act (which enables proceedings to be brought under that Act in certain circumstances where a bankrupt has improved the property of another person).

Clause 12 deals with the division of the domestic assets. In general they are to be shared equally.

The obligation to share them equally will not apply if—

- (a) The marriage has subsisted for less than 3 years and either—
 - (i) That part of the assets was owned wholly or substantially at the date of the marriage by one spouse; or
 - (ii) The contribution of one spouse to that part of those assets has for any reason clearly been disproportionately small; or
- (b) The contribution of one spouse to that part of the assets, because of neglect of his or her responsibilities in relation to the other spouse, or because of dissipation of his or her income or capital, has clearly been disproportionately small; or
- (c) There are other circumstances of a special character.

Where the obligation to share the domestic assets equally does not apply, their division will be a matter for agreement between the husband and the wife, or if they are unable to agree, for decision by the Court. In any such case the Court will take into account the contributions made by each spouse to the assets or to the part of the assets in dispute.

Clause 13 deals with the division of the general assets. The share of each spouse is to be a matter for agreement between the husband and the wife or, if they are unable to agree, shall be proportionate to the respective contributions of the husband and the wife to those assets.

Clause 14: Subclause (1) defines what constitutes a contribution for the purposes of *clauses 12 (3) and 13*. The definition is very wide. It includes such things as the prudent management of the household, the care of any child of the family, the foregoing of a higher standard of living, and the giving of assistance or support (whether or not of a material kind).

Subclause (2) provides that where any increase in the value of any asset is not attributable to the efforts of either spouse, the share of a spouse in that increase is, in the absence of special circumstances, to be proportionate to his or her share in the asset itself or in the class of assets (i.e., domestic or general) to which it belongs.

Subclause (3) provides that, in determining the share of a spouse in the matrimonial property, the only conduct of the spouse that may be taken into account is conduct which is related to the extent or value of that property. The Court may however have regard to other conduct in determining what order it should make under *clauses 21 to 28*.

Clause 15 is the contracting-out provision. It enables any husband and wife, or any two persons in contemplation of marriage to each other, to make such agreement with respect to the status, ownership, and division of their property (including future property) as they think fit.

Every such agreement is required to be in writing signed by both parties and witnessed by a solicitor. The solicitor is required to certify that before the party whose signature he has witnessed signed the agreement he explained to that party the effect and implications of the agreement.

Minors may enter into such agreements but an agreement entered into by a minor who has not attained the age of 18 years and who is not and has not been married will require the approval of the Court.

This clause does not 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 delivery.

Clause 16 declares that agreements made between the parties to a *de facto* marriage with respect to the status, ownership, or division of their property (including future property) are not void or illegal as being contrary to public policy or founded upon an illegal consideration. Any such agreement may be qualified by an order made pursuant to *clause 49*.

Proceedings under Act

Clause 17: The general effect of this clause is that the Supreme Court and the Magistrate's Court are to have concurrent jurisdiction in respect of proceedings under this Act. Provision is made for transferring proceedings between the two Courts.

Clause 18 provides that an application to the Court under this Act may be made—

- (a) By either spouse or by the husband and the wife jointly, where they are living apart or upon their separation or divorce; or
- (b) By either spouse at any time on the ground that the other 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
- (c) By either spouse upon the bankruptcy of the other spouse, or by the Official Assignee on the bankruptcy of either spouse.

Clause 19 specifies the time within which proceedings must be commenced. Generally they must be commenced within 12 months of the dissolution of the marriage but the Court has power to extend the time.

Clause 20 confers on the Court the power to make orders 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.

Clause 21 enables the Court to make an order settling the matrimonial property or any part thereof on the children of the marriage.

Clause 22 authorises the Court to make an order granting to the husband or the wife the right personally to occupy the matrimonial home. A similar power already exists under section 57 of the Matrimonial Proceedings Act 1963.

Clause 23 authorises the Court to make an order vesting in either the husband or the wife the tenancy of any dwellinghouse. This clause is based on and largely follows section 60 of the Matrimonial Proceedings Act 1963.

Clause 24 provides that where any property is in the possession of either spouse under a hire purchase agreement, or under an agreement to lease or hire, the Court may make an order vesting the rights and obligations under the agreement in either spouse.

Clause 25 authorises the Court to make orders in respect of insurance policies.

Clause 26 authorises the Court to resolve disputes in respect of specific property.

Clause 27 empowers the Court to cancel or vary maintenance orders.

Clause 28 sets out the ancillary powers of the Court.

Clause 29 gives the Court a discretion to make the order under this Act which it considers appropriate. The clause is based on section 78 of the Matrimonial Proceedings Act 1963.

Clause 30 provides that any application or appeal under this Act shall be heard in private if the husband or wife so desires it. Where the application is made to a Magistrate's Court the provisions of section 111 of the Domestic Proceedings Act 1968 (which restricts the persons who may be present at the hearing) will apply unless further restrictions are imposed under this clause.

Clause 31 enables the Court to receive any evidence that it thinks fit, whether it is otherwise admissible in a Court of law or not.

Clause 32 provides for the giving of notice, by direction of the Court, to persons who have an interest in the property which would be affected by any order. Such persons are entitled to appear and be heard as parties to the application.

Clause 33 gives the Court power, on an application under this Act, to appoint the Registrar of the Court or such other person as the Court thinks fit to make an inquiry into the matters in issue between the parties or to settle a scheme in respect of the property comprised in the application.

Clause 34 provides for appeals.

Clause 35 enables the Court to make orders for the payment of costs.

Clause 36 provides for the registration of orders made under the Bill.

Protection of Spouses' Rights

Clause 37 sets out a procedure whereby the husband or wife may register a notice claiming an interest under this Act in any matrimonial property.

Clause 38 provides for the restraint of dispositions of property which it appears to the Court will defeat the claim or rights of any person under this Bill. The clause is based on section 80 of the Matrimonial Proceedings Act 1963.

Clause 39, which is based on section 81 of the Matrimonial Proceedings Act 1963, enables any such dispositions to be set aside.

Clause 40, which is based on section 43 of the Domestic Proceedings Act 1968, provides that where proceedings are pending under this Bill, 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.

Protection of Creditors

Clause 41, which is designed to protect the position of mortgagees, re-enacts the substance of section 8 of the Matrimonial Property Act 1963.

Clause 42 provides that certain agreements, dispositions, and other transactions between the husband and the wife with respect to their matrimonial property are void against creditors and the Official Assignee.

Miscellaneous Provisions

Clause 43 deals with the incidence of orders made under the Bill against the personal representative of the spouse. The clause is based on section 8A of the Matrimonial Property Act 1963.

Clause 44 declares that, 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.

Clause 45 declares that the rule of equity known as the presumption of advancement whereby in certain circumstances a person who purchases property and has it conveyed to another person is presumed, in the absence of evidence to the contrary, to have gifted that property to that other person, is hereby abolished as between husband and wife.

Clause 46 provides that as from the commencement of the Bill, 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.

Clause 47, which deals with proceedings in tort, re-enacts, with some amendments, section 4 of the Matrimonial Property Act 1963.

Clause 48 enables a minor who is or has been married to bring, institute, or defend proceedings under this Act without a guardian *ad litem* or next friend.

Clause 49: Subclause (1) enables an application to the Court under *clause 18* to be made by either or both parties to a *de facto* marriage.

Subclause (2) authorises the Court to entertain the application if it is satisfied that the parties have lived together as husband and wife for a period of not less than 2 years preceding the date of the application and if it considers that in all the circumstances it would be just to do so.

Subclause (3) provides that, subject to the power of the Court to extend the time, every application under this clause shall be made before the expiration of a period of 12 months after the parties have ceased to live together as husband and wife.

Clause 50 authorises the making of rules of Court and regulations for the purposes of **this Act**.

Clause 51 is a transitional provision. It provides that, notwithstanding the provisions of *clause 15*, where any application under the Act relates to the matrimonial property of any marriage that took place before the commencement of this Act, the Court may, in dealing with that application, have regard to any agreement or understanding entered into before the commencement of the Act by the parties to that marriage.

Clause 52 effects consequential amendments.

Clause 53 repeals the enactments listed in the Second Schedule.

Hon. Dr Finlay

MATRIMONIAL PROPERTY

ANALYSIS

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A BILL INTITULED

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 5

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 10

1. Short Title and commencement—(1) This Act may be cited as the Matrimonial Property Act 1975.

(2) This Act shall come into force on the 1st day of January 1977. 15

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: 20 25

“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: 30

“Court” means a Court having jurisdiction in the proceedings by virtue of section 17 of this Act: 35

“Domestic assets” has the meaning given to it by section 9 of this Act:

“Dwellinghouse” includes any flat or town house:

“Family chattels” means chattels owned by the husband or the wife or both of them and which comprise household furniture and household appliances, effects, and equipment, articles of household or family use or 40

amenity or of household ornament, tools, garden effects and equipment, vehicles and boats and their accessories, and household pets; and includes any of the foregoing chattels that are in the possession of the husband or wife pursuant to a hire purchase agreement or an agreement for lease or hire; but does not include chattels used wholly or principally for business purposes, or money or securities for money:

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“General assets” has the meaning given to it by section 9 of this Act:

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“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—

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

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(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

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(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:

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“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:

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“Marriage” includes a former marriage dissolved by divorce or by decree of dissolution of a voidable marriage, and a purported marriage that is void; and “husband”, “wife”, and “spouse” each have a corresponding meaning;

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“Matrimonial home” means any dwellinghouse—

(a) That is used habitually or from time to time by the husband and the wife or either of them as a family residence; or

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(b) That was so used immediately before the husband or the wife ceased to live together,— together with any land and buildings appurtenant to any such dwellinghouse which are (or, as the case may be, were) used wholly or principally for the purposes of the household; and if more than one dwellinghouse is or was being so used, includes every such dwellinghouse and the land and buildings which form part of the particular matrimonial home by virtue of the foregoing provisions of this definition; and includes a joint family home: 5 10

“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: 15

“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 “assets” has a like meaning: 20

“Separate property” means all the property of either spouse which is not matrimonial property. 25

(2) For the purposes of this Act the value of any property to which an application under this Act relates shall, subject to section 15 of this Act, be its value as at the date of the application.

(3) For the purposes of this Act the share of a spouse in the matrimonial property shall, subject to section 15 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. 30 35

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 provided by this Act, this Act shall have effect in place of the rules of common law and of equity relating to the rights, powers, and liabilities of husband and wife in respect of property as between themselves and as between husband and wife, and each of them, and other persons. 40

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

(3) 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. 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 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 the 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 if, before their marriage, the husband and wife have agreed that the matrimonial property law of some

country other than New Zealand shall apply to their property, and the agreement is in writing or is otherwise valid according to the law of that country.

(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. 5

8. Matrimonial property defined—(1) Matrimonial property shall consist of— 10

- (a) The matrimonial home or homes and the family chattels; and
- (b) All property owned jointly or in common by the husband and the wife; and
- (c) All property owned 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 15
- (d) Subject to subsections (6) and (7) of this Act, all property acquired by either the husband or the wife after the marriage; and 20
- (e) Any income and gains derived from, and the proceeds of any disposition of, any matrimonial property; and 25
- (f) Any policy of assurance taken out by one spouse for his benefit or for the benefit of the other, whether the proceeds are payable on the death of the assured or on the occurrence of a specified event or otherwise; and 30
- (g) Any policy of insurance in respect of any property that forms part of the matrimonial property; and
- (h) All other property that the spouses have agreed, pursuant to section 15 of this Act, shall be matrimonial property. 35

(2) Subject to subsections (6) and (7) of this section, 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 to the contribution 40

of the other spouse (as defined in section 14 (1) of this Act), in which event they shall be matrimonial property.

(4) All property acquired by either the husband or the wife after they have ceased to live together as husband and wife shall be separate property unless, with the free consent of both, they subsequently resume cohabitation.

(5) Subject to section 15 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, any property acquired by either the husband or the wife after the discharge of that spouse from bankruptcy may be matrimonial property.

(6) Subject to subsection (7) of this section, 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 consent of the spouse 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 paragraph (a), paragraph (b), or paragraph (c) of section 9 (2) of this Act shall become part of the matrimonial property.

(7) Property acquired by succession or by survivorship or as a beneficiary under a trust or by gift from the other spouse or from a third person (not being a gift intended for the common use or benefit of both the husband and the wife) shall not be matrimonial property unless, with the 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.

9. Domestic assets and general assets defined—(1) Matrimonial property shall comprise two classes of assets, namely domestic assets and general assets.

(2) Subject to the provisions of this Act, the domestic assets shall comprise:

- (a) The matrimonial home or homes; and
- (b) The family chattels; and
- (c) Any land purchased by either the husband or the wife or both for the purpose of erecting thereon a matrimonial home; and

- (d) Any policy of assurance upon the life of the husband or the wife if that policy is held by the husband or the wife for the benefit of either of them or both of them; and
- (e) All other property that the husband and the wife have agreed, pursuant to section 15 of this Act, shall be domestic assets; and 5
- (f) Such other part of the matrimonial property as does not exceed \$10,000 in value or, in any case where subsection (3) of this section does not apply and neither spouse is the beneficial owner of an estate in land on which the matrimonial home or homes are situated, such other part of the matrimonial property as does not exceed \$30,000 in value. 10
- (3) In addition to the property specified in paragraphs (b) to (f) of subsection (2) of this section, where the owner of a matrimonial home has sold it with the intention of purchasing another matrimonial home with the proceeds, or with the proceeds together with any additional sum of money, those proceeds shall during the period of 2 years after the date on which they were received or became payable, be part of the domestic assets. 15 20
- (4) Where any matrimonial home is a homestead, that matrimonial home shall not form part of the domestic assets but assets to the value of the homestead shall form part of the domestic assets. 25
- (5) For the purposes of subsection (4) of this section, the value of the homestead shall be the value that it would have if its site were comprised in a separate certificate of title and had a right of access to a public street or road, and, in the absence of evidence to the contrary, that value shall be deemed to be \$20,000. 30
- (6) Any property that the husband and wife have agreed, pursuant to section 15 of this Act, shall be general assets or separate property shall not form part of the domestic assets. 35
- (7) The general assets shall comprise the whole of the matrimonial property other than the domestic assets.
- (8) The Court may, on the application of either the husband or the wife, make an order determining the incidence of any of the entitlements conferred by subsections (2) (f) and (4) of this section; but, in the absence of any such order and of any agreement pursuant to section 15 of this Act dealing with that incidence, that incidence shall fall rateably upon the whole of the general assets. 40

Substantive Rules of Matrimonial Property

10. Nature of interest in matrimonial property—(1) Notwithstanding any legal or equitable interest that a husband or wife might otherwise have in the matrimonial property, 5 each spouse shall by virtue of this Act and arising from his or her marriage to the other, have a present interest in the nature of an unsecured charge over the whole of the matrimonial property.

(2) Nothing in this section shall affect the title of any third 10 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.

11. Rights of creditors in respect of matrimonial property—

15 (1) The interest that a spouse has in the matrimonial property by virtue of this Act shall be liable for the payment of debts which are incurred by that spouse personally.

(2) The whole of the matrimonial property shall be liable for the payment of debts which are incurred—

20 (a) By the husband and 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

25 (c) In the course of managing the affairs of the household or for the benefit of both the husband and the wife or of any child of the marriage.

(3) For the purpose of recovering debts of the kind described in subsection (2) of this section, execution may be levied, and judgments may be enforced, against the family 30 chattels irrespective of whether those debts were incurred by the husband or the wife or both of them.

(4) Subject to the provisions of this section, the interest that the husband or wife has in the matrimonial property by virtue of this Act shall, on his or her bankruptcy, form part 35 of the estate vesting in the Official Assignee pursuant to the Insolvency Act 1967 and available to his or her creditors; but the bankruptcy of one spouse shall not have the effect of vesting in the Official Assignee the interest of the other spouse in the matrimonial property or of making that interest 40 available to the creditors of the bankrupt spouse.

(5) Notwithstanding the provisions of subsections (1), (2), and (4) of this section, on the application of the Official Assignee, the Supreme Court may, if it is satisfied that it would, in the special circumstances of the case, be unjust not to do so, order that the whole or any part of the interest of a bankrupt's spouse in the matrimonial property shall form part of the bankrupt's estate and shall be liable for the payment of his debts or such debts or class of debts as the Court considers just. 5

(6) Nothing in this section shall limit or affect any right of any creditor of a husband or wife in respect of the separate property of the husband or wife. 10

(7) Nothing in this section shall 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, subject to the provisions of sections 37, 39, 41, and 42 of this Act, every such instrument shall have the same effect as if this Act had not been passed. 15

(8) Nothing in this section shall derogate from the provisions of the Joint Family Homes Act 1964. 20

(9) This section shall have effect notwithstanding the provisions of section 55 of the Insolvency Act 1967.

12. Division of domestic assets—(1) Subject to the provisions of this section, the share of each spouse in the domestic assets upon the division of the matrimonial property shall be equal. 25

(2) The provisions of subsection (1) of this section shall not apply in respect of any part of the domestic assets if—

(a) The marriage has subsisted for less than 3 years and either— 30

(i) That part of the assets was owned wholly or substantially at the date of the marriage by one spouse; or

(ii) The contribution of one spouse to that part of those assets has for any reason clearly been disproportionately small; or 35

(b) The contribution of one spouse to that part of the assets, because of neglect of his or her responsibilities in relation to the other spouse, or because of dissipation of his or her income or capital, has clearly been disproportionately small; or 40

(c) There are other circumstances of a special character.

(3) In any case to which subsection (2) of this section applies, the share of each spouse in the domestic assets, or in part of the domestic assets, shall be a matter for agreement between the husband and the wife, or, subject to the provisions of this Act, to be decided by the Court if they are unable to agree. In any such case the Court shall take into account the contributions made by each spouse to the assets or that part of the assets, and the provisions of subsections (2) and (3) of section 14 of this Act shall apply.

10 **13. Division of general assets**—The share of each spouse in the general assets upon the division of the matrimonial property shall be a matter for agreement between the husband and the wife or, if they are unable to agree, shall, subject to subsections (2) and (3) of section 14 of this Act, be proportionate to the respective contributions of the husband and the wife to those assets.

14. Contributions of spouses—(1) For the purposes of sections 12 (3) and 13 of this Act a contribution includes—

- 20 (a) The acquisition or creation of assets, including the payment of money for those purposes; and
- (b) Anything done or suffered by a spouse that increases, directly or indirectly, the extent or value of the domestic assets or the general assets, whether in the form of money payments, savings, or the performance of work or services in respect of the assets or any part thereof, or by the prudent management of the household, or by the care of any child of the family, or by the foregoing of a higher standard of living that would otherwise have been available to that spouse, or by the giving of assistance or support (whether or not of a material kind) or otherwise howsoever.

35 (2) Where any increase in the value of any asset is not attributable to the efforts or contributions of either spouse, the share of a spouse in that increase shall, for the purposes of sections 12 (3) and 13 of this Act and in the absence of special circumstances, be proportionate—

- 40 (a) In the case of an asset that is part of the domestic assets, to his or her share in those assets; and
- (b) In the case of an asset that is part of the general assets, to his or her share in the particular asset.

(3) Subject to the provisions of section 12 of this Act, any conduct of either spouse which is related to the extent or value of the matrimonial property may be taken into account in determining the share of that spouse in that property, but the conduct of the spouses shall not otherwise be taken into account in determining their share of the matrimonial property. The Court may however have regard to such conduct in determining what order it should make under any of the provisions of sections 21 to 28 of this Act. 5

15. Power to make agreements—(1) Subject to the provisions of this Act, a husband and wife, or any two persons in contemplation of their marriage to each other, may, for the purposes of this Act, make such agreement with respect to the status, ownership, and division of their property (including future property) as they think fit. 15

(2) Without limiting the generality of subsection (1) 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 20

(b) Provide that any matrimonial property or any class of matrimonial property shall be part of the domestic assets or shall be part of the general assets; or

(c) Define the share of the matrimonial property or any part thereof that each spouse shall be entitled to upon the determination of the marriage; or 25

(d) Provide for the calculation of such share and prescribe the method by which the matrimonial property or any part thereof may be divided.

(3) Every such agreement shall be in writing signed by both parties and witnessed in the manner provided in subsection (4) of this section, and every such agreement that does not comply with this subsection shall be void. 30

(4) Every such agreement shall—

(a) If signed in New Zealand, be witnessed by a solicitor of the Supreme Court of New Zealand; or 35

(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,— 40

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.

5 (5) 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:

10 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.

15 (6) 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.

20 **16. Agreements by parties to *de facto* marriage**—No agreement between persons who are cohabiting as husband and wife, or in contemplation of such cohabitation, with respect to the status, ownership, or division of their property (including future property) shall be void or illegal as being contrary to public policy or founded upon an illegal consideration, and every such agreement if otherwise valid may
25 be enforced according to its tenor, but subject to the power of the Court to make any such order on an application made pursuant to section 49 of this Act as it considers just.

Proceedings under Act

30 **17. 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:

35 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.

40 (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, (other than proceedings pending under section 22 or section 23 of this Act), 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.

18. 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, where they are living apart or upon their separation or divorce; or
- (b) By either spouse at any time on the ground that the other 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
- (c) By either spouse upon the bankruptcy of the other spouse, or by the Official Assignee on the bankruptcy of either spouse.

19. 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.

20. **Court may make orders dividing property**—On an application under section 18 of this Act, the Court may, subject to the provisions of this Act, make such order as it considers just determining the respective shares of each spouse
5 in the matrimonial property or any part thereof, or dividing the matrimonial property or any part thereof between the husband and the wife.

21. **Orders settling property on children**—(1) The Court 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) Any such order may be made and shall have effect
15 notwithstanding any agreement between the husband and the wife pursuant to section 15 of this Act.

22. **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
20 thinks fit, the right personally to occupy the matrimonial home or, if there is more than one matrimonial home, any one or more of the matrimonial homes.

(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
25 the matrimonial home.

(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
30 representative of the person against whom it is made, unless the Court otherwise directs.

Cf. 1963, No. 71, s. 57

23. **Orders with respect to tenancy**—(1) Notwithstanding the provisions of section 18 of this Act, the Court may at any
35 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 5
- (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. 10

(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. 15 20

(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. 25

(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. 30

(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. 35

(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 40

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

- 5 **24. Orders when property subject to hire purchase agree-**
ment—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 within
10 the meaning of the Hire Purchase Act 1971, 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 notwith-
standing anything in any agreement.

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

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

- (a) Direct that the policy be surrendered and the proceeds
of its surrender paid to the husband or the wife or,
20 in such proportions as it thinks just, to both of them:
(b) 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:
(c) Make such other order as it thinks just.

- 25 **26. Disputes in respect of specific property**—(1) Notwith-
standing anything in section 18 of this Act, either spouse, or
any person upon whom conflicting claims are made by the
husband and the wife, may at any time apply to the Court
under this Act in respect of any specific property.

- 30 (2) Upon such application the Court may, subject to the
provisions of this Act, make such declaration or order relating
to the status, ownership, vesting, or possession of the property
as it considers just.

- 35 **27. Supreme Court may cancel or vary maintenance**
orders—(1) In any proceedings under this Act, the Supreme
Court, where it makes any order under this Act, may, if it
considers it just to do so, discharge, cancel, suspend, or vary
any maintenance order made against one of the spouses in
favour of the other spouse, 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) 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. 5

28. 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 20 to 27 of this Act. 10

(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 21 to 27 of this Act, and may vary any terms or conditions upon or subject to which any such order has been made. 15

(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: 20

- (a) An order for the sale of the matrimonial property or any part thereof, and for the division, vesting, or settlement of the proceeds: 25
- (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: 30
- (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: 35
- (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: 40
- (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:
- 5 (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
10 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:
- 15 (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
20 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 as the Court thinks fit.
- 25 (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-
30 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
35 conditions (if any) as the Court thinks fit.

29. 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,
40 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

30. 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. 5

31. 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. 10

32. 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. 15

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

33. 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. 20

(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. 25

(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. 30

(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: 35

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
5 a debt due to the Crown.

34. Appeals—(1) An appeal shall lie to the Supreme Court from any order or decision of a Magistrate's Court under this Act. Every appeal under this subsection, **except an appeal** upon a question of law, shall be by way of rehearing of the
10 original proceedings as if the proceedings had been properly and duly commenced in the Supreme Court. The decision of the Supreme Court upon any such appeal shall be final:

Provided that any party may, with the leave of the Court of Appeal, appeal to the Court of Appeal upon any question
15 of law.

(2) An appeal shall lie to the Court of Appeal from any order or decision of the Supreme Court under this Act:

Provided that if the order or decision was made on appeal from a Magistrate's Court an appeal shall lie to the Court of
20 Appeal only in accordance with the proviso to subsection (1) of this section.

(3) Except on an appeal upon a question of law, the Court of Appeal may, in its discretion, rehear the whole or any part of the evidence, or may receive further evidence, if it thinks
25 that the interests of justice so require.

(4) The decision of the Court of Appeal shall in every case be final.

Cf. 1968, No. 63, s. 31

35. Costs—Subject to any rules of procedure made for the
30 purposes of this Act, the Court may order any party to any proceedings under this Act to pay to the other party such costs as the Court thinks reasonable for solicitor's or counsel's fees and witnesses' expenses.

36. Registration of orders—(1) Where an order made under
35 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
40 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— 5

- (a) The order is discharged or cancelled by the Court under section 28 (2) of this Act; or
- (b) The person in whose favour and the person against whom the order is made so agree in writing; or
- (c) The period for which the order was made has expired; 10
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 15 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. 20

Cf. 1963, No. 71, ss. 57 (9), (10), (11), 59 (4) 25

Protection of Spouses' Rights

37. Notice of interest against title—(1) Where any part of the matrimonial property consists of an interest in land capable of registration under the Land Transfer Act 1952, or of shares, stock or securities in any company registered in New Zealand, or of other property the legal title to which passes upon or is evidenced by registration, the husband or wife (not being the registered proprietor or one of the registered proprietors of such property) may in the prescribed manner register a notice claiming an interest under this Act. 30 35

(2) Any such notice 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.

(3) Upon the registration of the notice no instrument disposing of or charging the interest or the property shall be registered unless— 40

- (a) The instrument is signed or its making is authorised by both the husband and the wife; or
- (b) The husband or the wife or both of them have died; or
- (c) The Court orders that the notice be discharged.

5 **38. 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
10 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.

15 (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
20 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

25 **39. 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.

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

35 (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

40 (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. 5 10

(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. 15

(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. 20 25

Cf. 1963, No. 71, s. 81

40. 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. 30 35

(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

41. **Protection of mortgagee**—Subject to the provisions of sections 37 to 39 of this Act, the rights conferred on the husband or wife by any order made under this Act shall be
5 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
10 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
15 being an order directing the sale of any property.

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

42. **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
20 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
25 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
30 customary occasion and is reasonable in amount having regard to the donor's means and liabilities.

Miscellaneous Provisions

43. **Incidence of orders against personal representative of spouse**—(1) The incidence of any order made under this Act
35 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
40 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 22 or section 23 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

44. 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.

45. **No presumption of advancement**—The rule of equity known as the presumption of advancement whereby in certain circumstances a person who purchases property and has it conveyed to another person is presumed, in the absence of evidence to the contrary, to have gifted that property to that other person, is hereby abolished as between husband and wife.

46. **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.

47. **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)

48. 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. 5

49. Applications by *de facto* spouses—(1) An application to the Court under section 18 of this Act may be made by either party or both parties to a *de facto* marriage notwithstanding that they are not and never have been married to each other. 10

(2) If the Court is satisfied that the parties have lived together as husband and wife for a period of not less than 2 years preceding the date of the application it may entertain the application if it considers that in all the circumstances it would be just to do so. 15

(3) Subject to section 19 (2) of this Act, every such application shall be made before the expiration of a period of 12 months after the parties have ceased to live together as husband and wife. 20

50. 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. 25

(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. 30 35

51. Transitional provision—Notwithstanding the provisions of section 15 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

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

52. Consequential amendments—The enactments specified 5 in the First Schedule to this Act are hereby amended in the manner indicated in that Schedule.

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

10 (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.

15 (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.

SCHEDULES

Section 52

FIRST SCHEDULE

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>

FIRST SCHEDULE—*continued*
 CONSEQUENTIAL AMENDMENTS—*continued*

Enactment Amended	Amendment
1908, No. 105—The Life Insurance Act 1908. (1957 Reprint, Vol. 8, p. 335)— <i>continued</i>	<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>Cf. 1952, No. 53, s. 17</p>
1952, No. 51—The Property Law Act 1952. (Reprinted 1970, Vol. 3, p. 2290)	<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>
1963, No. 71—The Matrimonial Proceedings Act 1963	<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>

*Matrimonial Property*FIRST 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>

FIRST 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 <u>subsection (2)</u> 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 <u>subsection (2)</u> 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>

*Matrimonial Property*FIRST 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 subsection:</p> <p>“(5) The Court shall not exercise its powers under this section so as to defeat or vary any agreement, entered into under <u>section 15</u> of the Matrimonial Property Act 1975, 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>

SECOND SCHEDULE

Section 53

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.)
- 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.