

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 2 October 1968.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 3 December 1968.

Words inserted by the Committee are shown with triple rule before first line and after last line.

Hon. Mr Hanan

MATRIMONIAL PROPERTY AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Matrimonial Property Act 1963

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

1. Short Title and commencement—(1) This Act may be cited as the Matrimonial Property Amendment Act 1968, and shall be read together with and deemed part of the Matrimonial Property Act 1963* (hereinafter referred to as the principal Act).

(2) (*Section 3 of*) this Act shall come into force on the first day of January, nineteen hundred and sixty-nine.

Struck Out

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the date of its passing.

*1963, No. 72

Amendments: 1966, No. 72; 1967, No. 93

No. 45—3

New

1A. Jurisdiction of Magistrate's Court—Section 5 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) A Magistrate's Court may exercise jurisdiction under this section where the value of the property in dispute is not more than fourteen thousand dollars in the case of an estate or interest in land or of a matrimonial home and not more than five thousand dollars in the case of any other property:

“Provided that a Magistrate's Court may make an order under this section granting to the husband or wife the right to occupy the matrimonial home or to possession of the furniture therein irrespective of the value thereof.”

2. Application in respect of joint family home—Section 5 of the principal Act is hereby amended by adding to subsection (6) the following proviso:

“Provided that no order may be made under this section in respect of a joint family home after the date of death of either spouse if at that date the spouses were cohabiting.”

New

2A. Property disputes—Section 5 of the principal Act is hereby amended by inserting in subsection (2), after the word “including”, the words “but without limiting the general power conferred by the foregoing provisions of this subsection”.

3. Time for commencement of proceedings—The principal Act is hereby further amended by inserting, after section 5, the following section:

“5A. (1) This section shall apply with respect to the following applications under section 5 of this Act:

“(a) An application made after the marriage has been dissolved otherwise than by death or after a decree of nullity of a void marriage has been made, whether or not either or both of the parties have subsequently died:

“(b) An application made after the death of one or both parties to a marriage that had not sooner been dissolved and in respect of which a decree of nullity had not been made.

“(2) Every application to which this section applies shall be made before the expiration of the following period:

“(a) In the case of an application to which paragraph (a) of subsection (1) of this section applies, a period of ~~(six)~~ twelve months after the date of the sealing 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:

“(b) In the case of an application to which paragraph (b) of that subsection applies, a period of twelve months after the date of the grant in New Zealand of administration in the estate of the party to the marriage against whose estate the application is made.

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“(3) Notwithstanding anything in subsection (2) of this section, a Judge or the Magistrate’s Court, as the case may be, may (*in special circumstances*) 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 Judge or Magistrate 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 section:

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“Provided that no such extension shall be granted in any case where the application is made against the legal personal representatives of a deceased husband or wife, unless the application for extension is made before the final distribution of the estate, and no distribution of any part of the estate made before the legal personal representatives receive notice that the application for extension has been made to a Judge or a Magistrate’s Court, and after notice (if any) of an intention to make an application has lapsed in accordance with subsection (6) of section 30A of the Administration Act 1952 (as applied to applications under section 5 of this Act by section 6 of the Matrimonial Property Amendment Act 1968), shall be disturbed by reason of that application or of any order made thereon, and no action shall lie against the legal personal representatives by reason of their having made any such distribution.”

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4. Matters to be considered by Court—(1) Section 6 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

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“(1A) The Judge or Magistrate’s Court may make an order under section 5 of this Act in favour of a husband or wife, notwithstanding that he or she made no contribution to the property in the form of money payments or that his or her contribution in any other form was of a usual and not an extraordinary character.”

(2) Section 6 of the principal Act is hereby further amended by inserting in subsection (2), before the words “subsection (3)”, the words “subsection (2) or”.

5. Relevance of conduct—The principal Act is hereby further amended by inserting, after section 6, the following section:

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“6A. On any application under section 5 of this Act, the Judge of the Magistrate’s Court, as the case may be, in determining the amount of the share or interest of the husband or the wife in any property or in the proceeds of the sale thereof, shall not take into account any wrongful conduct of the husband or the wife which is not (*directly*) related to the acquisition of the property in dispute or to its extent or value.” 5

Cf. Marriage (Property) Act 1962, s. 3 (Victoria)

6. Protection of administrator of deceased husband or wife against claims—Section 30A of the Administration Act 1952 (as inserted by section 2 of the Administration Amendment Act 1960 and amended by section 8 (2) of the Matrimonial Proceedings Amendment Act 1968) is hereby further amended by inserting in subsection (1), after the words “Matrimonial Proceedings Act 1963”, the words “or section 5 of the Matrimonial Property Act 1963”. 15

7. Procedure—Section 7 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Where the Court makes an order under section 5 of this Act, the provisions of section 57 or, as the case may require, section 58 or section 59 of the Matrimonial Proceedings Act 1963, as far as they are applicable and with the necessary modifications, shall apply as if the order were an order in relation to a matrimonial home made under the said section 57 or section 58 or section 59.” 25

8. Rights of mortgagee, etc.—Section 8 of the principal Act is hereby amended by omitting the words “before the date of the making of the order or if the rights of that person arise under an instrument executed before that date”, and substituting the words “before the order was registered or if the rights of that person arise under an instrument executed before the date of the making of the order”. 30

9. Incidence of orders against personal representatives of husband or wife—(1) The principal Act is hereby further amended by inserting, after section 8, the following section: 35

“8A. (1) The incidence of any order made by a Judge or Magistrate’s Court under section 5 of this Act against the legal personal representatives of a deceased husband or wife shall fall upon the property in respect of which the order is made: 40

“Provided that the Judge or Court may order that the incidence of the order—

5 “(a) Shall fall rateably upon the whole estate of the deceased, or, in cases where the authority of the Judge or the Court does not extend or cannot directly or indirectly be made to extend to the whole estate, then to so much thereof as is subject to the authority of the Judge or the Court; or

10 “(b) Shall fall upon any specified portion of the estate.
“(2) Where the Judge or the Court makes any order under the proviso to subsection (1) of this section,—

15 “(a) The Judge or the Court shall have power to exonerate any part of the estate of the deceased from the incidence of the order made under section 5 of this Act, after hearing such of the parties who may be affected by the exoneration as the Judge or the Court thinks necessary, and may for that purpose direct any legal personal representatives to represent, or appoint any person to represent, any such party:

20 “(b) The Judge or 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.

25 “(3) Any order under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Judge or the Court thinks fit.”

30 (2) Nothing in this section shall invalidate any payment made or any act or thing done in good faith before the passing of this Act by the legal personal representatives of a deceased
35 husband or wife.

10. Consequential amendment—Section 5 of the principal Act is hereby amended by omitting from subsection (7) the words “sections 6 to 8”, and substituting the words “sections 5A, 6, 7, 8, and 8A”.