

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 9 October 1963

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

Hon. Mr Hanan

**(LAW REFORM (HUSBAND AND WIFE))
MATRIMONIAL PROPERTY**

ANALYSIS

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A BILL INTITULED

An Act to make provision with respect to proceedings as to property or in tort between husband and wife

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 **(*Law Reform (Husband and Wife)*) Matrimonial Property Act 1963**.

10 (2) **(*Section 5*)** Sections 5, 5A, 5B, 5C, and subsection (3) of section 6 of this Act shall come into force on the first day of January, nineteen hundred and sixty-five.

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

15 “Marriage” includes a former marriage; and “party to a marriage” has a corresponding meaning:

20 “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.

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3. Criminal proceedings—(1) No criminal proceedings shall be taken against any party to a marriage by or on the complaint of the other party to the marriage—

- (a) While the parties are living together; or
- (b) While the parties are living apart, with respect to any 5
act done or omitted while they were living together—

in respect of any property claimed by the other party to the marriage.

(2) Subject to the provisions of subsection (1) of this section and of section 226 of the Crimes Act 1961, each of 10
the parties to a marriage shall have against every other person (including the other party to the marriage) the same remedies and redress by way of criminal proceedings for the protection and security of his or her property as if he or she 15
were unmarried.

Cf. 1952, No. 53, ss. 9, 18

4. Proceedings in tort—(1) Subject to the provisions of 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 20
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, 25
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 30
under section 5 of this Act.

(3) Without limiting the provisions of paragraph (c) of subsection (2) of this section, the Court may in any such action exercise any power which could be exercised on an application under section 5 of this Act or give such directions 35
as it thinks fit for the disposal under that section 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 40
the defendant.

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(5) This section shall apply only where the cause of action arises after the date of the passing of this Act. In any case where the cause of action arose before that date, the provisions of sections 3 and 9 of the Married Women's Property Act 1952 shall continue to apply as if this section and section 6 of this Act had not been passed.

Cf. 1936, No. 31, s. 17 (1A); 1952, No. 53, ss. 3, 9; 1955, No. 73, s. 3; Law Reform (Husband and Wife) Act 1962, s. 1 (U.K.)

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5. Property disputes—(1) In any question between husband and wife as to the title to or possession or disposition of property (including any question as to investment by one party of money of the other without consent) the husband or the wife, or any person on whom conflicting claims are made by the husband and wife, may apply by summons or otherwise in a summary way to any Judge of the Supreme Court or (irrespective of the value of the property in dispute) to a Magistrate's Court.

20 (2) On any such application the Judge or Magistrate may make such order as he thinks fit with respect to the property in dispute, including any order for—

- (a) The sale of the property and the division or settlement of the proceeds; or
- 25 (b) The partition or division of the property; or
- (c) The vesting of property owned by one spouse in both spouses in common; or
- (d) The conversion of joint ownership into ownership in common;—

30 and may make such order as to the costs of and consequent upon the application as he thinks fit, and may direct any inquiry touching the matters in question to be made in such manner as he thinks fit.

(3) Subject to the provisions of subsection (5) of this section, the Judge or Magistrate may make such order under this section, whether affecting the title to property or otherwise, as appears just, notwithstanding that the legal or equitable interests of the husband and wife in the property are defined, or notwithstanding that the spouse in whose favour 40 the order is made has no legal or equitable interest in the property.

(4) In considering any application under this section, the Judge or Magistrate shall, where the application relates to a matrimonial home or to the division of the proceeds of the sale of a matrimonial home, and may in any other case, 45

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have regard to the respective contributions of the husband and wife to the property in dispute (whether in the form of money payments, services, prudent management, or otherwise howsoever). 5

(5) The Judge or Magistrate shall not exercise the powers conferred upon him under this section so as to defeat any common intention which he is satisfied was expressed by the husband and the wife.

(6) An order made under this section shall be subject to appeal in the same way as an order made by the Judge or Court in an action in the Supreme Court or a Magistrate's Court, respectively, would be. 10

(7) Any application or appeal under this section shall be heard in private if the husband or wife so desires. 15

(8) If any person other than the husband or wife is the applicant under this section, that person shall, for the purposes of costs or otherwise, be treated as a stakeholder only.

(9) Where the Court makes an order under this section granting to the husband or wife the right to occupy a matrimonial home or directing the sale of a matrimonial home and the division of the proceeds between the spouses or for the vesting of a matrimonial home owned by one spouse in both spouses in common or for the conversion of joint ownership of a matrimonial home into ownership in common, the provisions of section 48 or, as the case may require, section 49 or section 50 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 under the said section 48 or section 49 or section 50. 20 25 30

(10) The provisions of sections 71 and 72 of the Matrimonial Proceedings Act 1963 (which relate to the restraining and setting aside of dispositions) shall, as far as they are applicable and with the necessary modifications, apply with respect to an application and an order under this section. 35

(11) Subject to the provisions of Part VIII of the Matrimonial Proceedings Act 1963, where any question which could have been raised for decision in proceedings under this section arises between husband and wife in any other proceedings, the Judge or Court shall decide the question as if it had been raised for decision in proceedings under this section. 40

(12) Where at the time when an application for a separation order is made under section 17 of the Destitute Persons Act 1910 proceedings under this section are pending in a Magistrate's Court between the parties to the application, 45

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or such proceedings are commenced before the separation order is granted, the Court may hear and determine the proceedings under this section in conjunction with the proceedings between the parties under the Destitute Persons Act 1910.

(13) This section shall apply with respect to any matrimonial home, whether or not it is a joint family home within the meaning of the Joint Family Homes Act 1950.

10 (14) In this section the terms "husband" and "wife" include the legal personal representatives of the husband or wife.

(15) The following enactments are hereby repealed:

(a) Section 19 of the Married Women's Property Act 1952:

(b) The Married Women's Property Amendment Act 1961.

15 Cf. 1952, No. 53, s. 19; 1961, No. 90, s. 2; Marriage (Property) Act 1962, s. 3 (Victoria)

New

5. Property disputes—(1) In any question between husband and wife as to the title to or possession or disposition of property (including any question as to investment by one party of money of the other without consent) the husband or the wife, or any person on whom conflicting claims are made by the husband and wife, may apply to any Judge of the Supreme Court or, subject to the provisions of subsection
25 (4) of this section, to a Magistrate's Court.

(2) On any such application the Judge or Magistrate may make such order as he thinks fit with respect to the property in dispute, including any order for—

30 (a) The sale of the property or any part thereof and the division or settlement of the proceeds; or

(b) The partition or division of the property; or

(c) The vesting of property owned by one spouse in both spouses in common in such shares as he thinks fit; or

35 (d) The conversion of joint ownership into ownership in common in such shares as he thinks fit;—

and may make such order as to the costs of and consequent upon the application as he thinks fit, and may direct any inquiry touching the matters in question to be made in such manner as he thinks fit.

40 (3) Subject to the provisions of subsection (2) of section 5A of this Act, the Judge or Magistrate may make such order under this section, whether affecting the title to property or

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5 otherwise, as appears just, notwithstanding that the legal or equitable interests of the husband and wife in the property are defined, or notwithstanding that the spouse in whose favour the order is made has no legal or equitable interest in the property.

(4) A Magistrate's Court may exercise jurisdiction under this section where the value of the property in dispute is within the limits of the jurisdiction of that Court:

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

15 (5) An order made under this section shall be subject to appeal in the same way as an order made by the Judge or Court in an action in the Supreme Court or a Magistrate's Court, respectively, would be.

20 (6) This section shall apply with respect to any matrimonial home, whether or not it is a joint family home within the meaning of the Joint Family Homes Act 1950.

(7) In this section and in sections 5A to 5C of this Act the terms "husband" and "wife" include the legal personal representatives of the husband or wife.

25 Cf. 1952, No. 53, s. 19; 1961, No. 90, s. 2; Marriage (Property) Act 1962, s. 3 (Victoria)

30 **5A. Matters to be considered by Court**—(1) In considering any application under section 5 of this Act, the Judge or Magistrate shall, where the application relates to a matrimonial home or to the division of the proceeds of the sale of a matrimonial home, and may in any other case, have regard to the respective contributions of the husband and wife to the property in dispute (whether in the form of money payments, services, prudent management, or otherwise howsoever).

35 (2) The Judge or Magistrate shall not exercise the powers conferred upon him under subsection (3) of section 5 of this Act so as to defeat any common intention which he is satisfied was expressed by the husband and the wife.

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

40 **5B. Procedure**—(1) Before any order is made under section 5 of this Act, such notice as the Court directs shall be given to any person having an interest in the property that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

New

(2) Any application or appeal under section 5 of this Act shall be heard in private if the husband or wife so desires.

5 (3) If any person other than the husband or wife is the applicant under section 5 of this Act, that person shall, for the purposes of costs or otherwise, be treated as a stakeholder only.

10 (4) Where the Court makes an order under section 5 of this Act granting to the husband or wife the right to occupy a matrimonial home or directing the sale of a matrimonial home and the division of the proceeds between the spouses or for the vesting in both spouses in common of a matrimonial home owned by one spouse or for the conversion of joint ownership of a matrimonial home into ownership in common,
15 the provisions of section 48 or, as the case may require, section 49 or section 50 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 under the said section 48 or section 49 or section 50.

20 (5) The provisions of sections 71 and 72 of the Matrimonial Proceedings Act 1963 (which relate to the restraining and setting aside of dispositions) shall, as far as they are applicable and with the necessary modifications, apply with respect to an application and an order under section 5 of this
25 Act.

(6) Subject to the provisions of Part VIII of the Matrimonial Proceedings Act 1963, where any question which could have been raised for decision in proceedings under section 5 of this Act arises between husband and wife in any other
30 proceedings, the Judge or Court shall decide the question as if it had been raised for decision in proceedings under section 5 of this Act.

(7) Where at the time when an application for a separation order is made under section 17 of the Destitute Persons
35 Act 1910 proceedings under section 5 of this Act are pending in a Magistrate's Court between the parties to the application, or such proceedings are commenced before the separation order is granted, the Court may hear and determine the proceedings under section 5 of this Act in conjunction with the
40 proceedings between the parties under the Destitute Persons Act 1910.

Cf. 1952, No. 53, s. 19 (1), (3); Marriage (Property) Act 1962, s. 3 (Aus.)

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5c. Rights of mortgagee, etc., not affected—The rights conferred on the husband or wife by any order made under section 5 of this Act shall be subject to the rights of the person 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 date of the making of the order or if the rights of that person arise under an instrument executed before that date: 5

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. 10

6. Consequential amendment and repeals—(1) Section 3 of the Married Women's Property Act 1952 is hereby amended by omitting the words "section nine hereof", and substituting the words "section 4 of the *(Law Reform (Husband and Wife))* Matrimonial Property Act 1963". 15

(2) The following enactments are hereby repealed:

- (a) Paragraph (c) of subsection (1) of section 39 of the Divorce and Matrimonial Causes Act 1928 (which subsection was substituted by subsection (5) of section 16 of the Law Reform Act 1936): 20
- (b) Subsection (1A) of section 17 of the Law Reform Act 1936 (which subsection was inserted by section 3 of the Law Reform Amendment Act 1955): 25
- (c) Sections 9 and 18 of the Married Women's Property Act 1952:
- (d) Section 3 of the Law Reform Amendment Act 1955:
- (e) So much of the Third Schedule to the Crimes Act 1961 as relates to the Married Women's Property Act 1952. 30

New

(3) The following enactments are hereby repealed:

- (a) Section 19 of the Married Women's Property Act 1952: 35
- (b) The Married Women's Property Amendment Act 1961.