

Reprint
as at 12 November 2018



Domestic Actions Act 1975

Public Act 1975 No 53
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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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An Act to abolish the actions for damages for adultery, for enticement of a spouse, for harbouring of a spouse or child, and for enticement or seduction of a child, and for breach of promise of marriage, and to provide for the settlement of property disputes arising out of the termination of agreements to marry

Title: amended, on 21 January 1981, by section 190(1) of the Family Proceedings Act 1980 (1980 No 94).

1 Short Title

This Act may be cited as the Domestic Actions Act 1975.

**Part 1
Damages for adultery**

2 Abolition of right to claim damages for adultery

- (1) Part 5 of the Matrimonial Proceedings Act 1963 is hereby repealed.
- (2) Nothing in this section shall affect any claim for damages made on a petition filed before the commencement of this Act.

Common law actions

3 Abolition of action for enticement of a spouse

- (1) No person shall be liable in tort to any other person for inducing the spouse of that other person to leave or remain apart from that other person.
- (2) This section shall have effect in relation to events occurring before as well as after the passing of the Family Proceedings Act 1980 but shall not affect any action commenced before the passing of that Act.

Section 3: replaced, on 21 January 1981, by section 190(2) of the Family Proceedings Act 1980 (1980 No 94).

4 Abolition of actions for enticement, seduction, and harbouring

- (1) No person shall be liable in tort—
 - (a) to a parent for—
 - (i) inducing a child of that parent to leave or remain apart from that parent; or
 - (ii) seducing the child of that parent; or
 - (iii) harbouring the child of that parent; or
 - (b) to any other person for—

- (i) seducing the servant of that other person; or
 - (ii) harbouring the wife of that other person.
- (2) In this section the expression **parent**, in relation to any child, includes a guardian or person standing in the place of a parent to that child.
- (3) This section shall have effect in relation to events occurring before as well as after the commencement of this Act but shall not affect any action commenced before the commencement of this Act.

5 Action for breach of promise of marriage abolished

- (1) No agreement between 2 persons to marry each other, wherever made, shall be a contract, and the action for breach of promise of marriage is hereby abolished.
- (2) This section shall have effect in relation to agreements made before as well as after the commencement of this Act but shall not affect any action commenced before the commencement of this Act.

Amendments and repeals

6 Consequential amendments and repeals

- (1)–(4) *Amendment(s) incorporated in the Act(s).*
- (5) *[Repealed]*
- (6)–(7) *Amendment(s) incorporated in the Act(s).*
- (8) This section shall not affect any action commenced before the commencement of this Act.

Section 6(5): repealed, on 1 February 1992, by section 159(2) of the Legal Services Act 1991 (1991 No 71).

Part 2

Property disputes arising out of agreements to marry

7 Interpretation

In this Part, unless the context otherwise requires,—

agreement to marry includes an agreement to marry which, immediately before the commencement of this Act, would have been void

court means a court having jurisdiction by virtue of section 9

party to the agreement includes the legal personal representative of such a party

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.

8 Property disputes arising out of agreements to marry

- (1) Where the termination of an agreement to marry gives rise to any question between the parties to the agreement, or between 1 or both of the parties to the agreement and a third party, concerning the title to or possession or disposition of any property, any such party may, in the course of any proceedings or on application made for the purpose, apply to the court for an order under this section.
- (2) Every application under this section shall be made within 12 months of the date of termination of the agreement or within such longer period as the court may allow.
- (3) Subject to subsection (6), on any such application the court shall make such orders as it thinks necessary to restore each party to the agreement, and any third party, as closely as practicable to the position that party would have occupied if the agreement had never been made.
- (4) In determining the orders to be made on any such application, the court shall not take into account or attempt to ascertain or apportion responsibility for the termination of the agreement.
- (5) In order to give effect to subsection (3), but without limiting the general power conferred thereby, the court may, on any such application, notwithstanding that the legal or equitable interests of all parties in any property may be defined, or that a party may have no legal or equitable interest in any property, make orders for—
 - (a) the sale of all or part of the property and the division or settlement of the proceeds in such shares and upon such terms as it thinks fit;
 - (b) the partition or division of the property;
 - (c) the vesting of property owned by 1 or 2 parties in 2 or more parties in common in such shares as it thinks fit;
 - (d) the conversion of joint ownership into ownership in common in such shares as it thinks fit;
 - (e) the payment of sums of money by any party to any other party or parties.
- (6) Where any property in dispute is a gift from a third party and the court is satisfied that the third party does not wish the gift to be returned to him, the court may make such orders with respect to that property as appear just in all the circumstances, but without taking into account or attempting to ascertain or apportion responsibility for the termination of the agreement.
- (7) An order made under this section shall be subject to appeal in the same way as an order made by the District Court or the High Court in an action in the District Court or in the High Court, respectively, would be.
- (8) Nothing in this section shall limit or affect the right of any person to bring an action for money had and received.

Section 8(7): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 8(7): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

9 Concurrent jurisdiction of High Court and Family Court

- (1) The High Court and the Family Court shall each have jurisdiction to make orders pursuant to section 8:

provided that the Family Court shall have no jurisdiction to make any such order in respect of any property on an application made while proceedings relating to or affecting the property were pending in the High Court.

- (2) The High Court, upon application by any party to proceedings pending on an application made under section 8 in the Family Court (other than an application made in the course of other proceedings in that court), shall order the proceedings to be removed into the High Court unless it is satisfied that the proceedings would be more appropriately dealt with in the Family Court. Where the proceedings have been so removed they shall be continued in the High Court as if they had been properly and duly commenced in that court.

- (3) *Amendment(s) incorporated in the Act(s).*

Section 9 heading: amended, on 1 October 1981, pursuant to section 17(1) of the Family Courts Act 1980 (1980 No 161).

Section 9 heading: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 9(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 9(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 9(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 9(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

9A Rules of procedure

Rules regulating the practice and procedure of the courts in proceedings under this Act may be made,—

- (a) in the case of the High Court, under section 148 of the Senior Courts Act 2016;
- (b) in the case of the Family Court, under section 16A of the Family Court Act 1980.

Section 9A: inserted, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 9A(a): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 9A(b): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

10 Other procedural matters

- (1) On any application made under section 8, such notice as the court directs shall be given to every person having or appearing to have an interest in the property in question, and any such person shall be entitled to appear and be heard in the matter as a party to the application.
- (2) An order made by the court pursuant to section 8 that a sum of money be paid to any person shall take effect as a judgment of the court in favour of that person for that sum and shall be enforceable accordingly, and a sum of money ordered to be paid in respect of any estate or interest in land shall also constitute a charge against that estate or interest, and may be registered under subpart 5 of Part 3 of the Land Transfer Act 2017.
- (3) Where any order made pursuant to section 8 affects the ownership of any estate or interest in land which is registered in the office of the Registrar-General of Land or the Registrar of Deeds, a copy of the order sealed with the seal of the court shall, upon application by any party to the application and upon payment of the prescribed fee (if any), be registered by the Registrar-General of Land or the Registrar of Deeds, as the case may require, and shall thereupon have effect according to its tenor.
- (4) Without limiting the provisions of subsection (2), where under any order made pursuant to section 8 a person is or may be liable to pay a sum of money to another person, the court may direct that it be paid either in 1 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.

Section 10 heading: replaced, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 10(2): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 10(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 10(3): amended, on 1 June 2002, pursuant to section 38(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

11 Rights of mortgagee, etc, not affected

The rights conferred on any person by an order made under section 8 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 order was registered or if the rights of that person arise under an instrument executed before the date of the making of the order:

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

Reprints notes

1 *General*

This is a reprint of the Domestic Actions Act 1975 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Land Transfer Act 2017 (2017 No 30): section 250

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b)

Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11): section 38(2)

Family Courts Amendment Act 2000 (2000 No 65): section 6

Legal Services Act 1991 (1991 No 71): section 159(2)

Family Courts Act 1980 (1980 No 161): section 17(1)

Family Proceedings Act 1980 (1980 No 94): section 190, (2)

Judicature Amendment Act 1979 (1979 No 124): section 12