

# Update

## Fisher on Relationship Property

**July 2021 — Service 97**

### Case commentary

#### **Chapter 1 — Nature of relationship property — Māori land — general land — s 6, Property (Relationships) Act 1976**

In *Bailey v Rerekura* [2019] NZFC 8996, a case involving general land, not Māori land, it was argued that the Court had no jurisdiction because tikanga and te tino rangatiratanga overrode the Property (Relationships) Act 1976. The argument was rejected: s 6 deals with Māori land and other land is general, falling under the Property (Relationships) Act 1976. See [1.50].

#### **Chapter 1 — Nature of relationship property — international law — jurisdiction — forum conveniens**

In *Christie v Foster* [2019] NZCA 623, [2020] 2 NZLR 238, [2019] NZFLR 365, a succession case, the Court of Appeal held that Ireland was the most appropriate forum. The deceased was domiciled in Ireland but had assets in New Zealand as well as Ireland. Her three children, two of whom were in Ireland, were in dispute over the will and proceedings had begun in Ireland. See [1.51].

#### **Chapter 1 — Nature of relationship property — international law — immovable property — superannuation scheme**

In *Stone v Stone* [2019] NZFC 3298, it was held that an Australian superannuation scheme was an immovable to be divided by the Australian courts. See [1.53].

#### **Chapter 2 — De facto relationships — termination of relationship — s 2D, Property (Relationships) Act 1976**

In *Holland v Dollard* [2020] NZFC 2051, [2020] NZFLR 491 one party's departure for overseas, while marking a key change in the relationship, did not amount to a termination of the relationship. See [2.11].

#### **Chapter 7 — Joint family homes — cancellation of settlement of property — s 10, Joint Family Homes Act 1964**

In *Official Assignee of Samoa v Tapusoa* [2020] NZHC 1928, (2020) 21 NZCPR 559 a settlement was cancelled because the wife had died and the husband was bankrupt and living in Samoa. See [7.9].

#### **Chapter 9 — Protecting the non-owner spouse or partner — lodging notice of claim — s 42, Property (Relationships) Act 1976**

Judge Parsons followed *Bourne v Baker* [2016] NZFC 2668, [2016] NZFLR 944 and *Clayton v Clayton (Vaughan Road Property Trust)* [2016] NZSC 29, [2016] 1 NZLR 551,

[2016] NZFLR 230 in *Darby v Hayward* [2019] NZFC 6937, where the man had an arguable case to sustain notices of claim based on a constructive or resulting trust. See [9.17].

**Chapter 9 — Protecting the non-owner spouse or partner — restraining and setting aside dispositions — “in order to defeat” — ss 43 and 44, Property (Relationships) Act 1976**

*Dyer v Gardiner* [2020] NZCA 385, [2020] NZFLR 293 was extended in *Johnston v Johnston* [2021] NZHC 96 from s 44 to s 43 of the Property (Relationships) Act 1976. See [9.42].

**Chapter 12 — Division of relationship property — exception to equal sharing — extraordinary circumstances — s 13, Property (Relationships) Act 1976**

In *Holland v Dollard* [2020] NZFC 2051, [2020] NZFLR 491 a 65:35 division of relationship property was ordered for a relationship of about 30 years from which there were 9 children and for the last 8 years of the relationship the applicant cared for the children and paid all household expenses while the respondent had issues with alcoholism and was violent to the applicant. See [12.35].

**Chapter 15 — Debts — joint debts — s 20(1) “relationship debt” para (a), Property (Relationships) Act 1976**

In *Dina v Nevin* [2019] NZFC 10469, a case involving a woman’s child from a previous relationship, she incurred legal costs in an unsuccessful endeavour to have the child placed in the care of herself and her new partner. It was held that these were joint debts as the partner knew what the proceedings were for and supported them. See [15.11].

**Chapter 18 — Jurisdiction, orders and implementation — interim distribution of relationship property — interim sale order**

The parties in *T v D* [2021] NZHC 776 had interests in several properties. Gordon J held that there was no jurisdiction to make an interim order with respect to property owned by a third party, in this case a company owned by the parties. However, the woman owned a house in her own right. An interim sale was ordered, with the proceeds to be shared equally. See [18.91].

**Chapter 18 — Jurisdiction, orders and implementation — application to set aside consent order — jurisdiction of Family Court**

In *Wihongi v Broad* [2020] NZFC 7746, [2020] NZFLR 585 the applicant sought the setting aside of a final order that had been made following an agreement at a judicial conference. It was unsuccessfully argued that the Family Court has inherent jurisdiction to act in this situation. Judge Pidwell also referred to *res judicata*, ie “the matter has been adjudicated”. See [18.97].