

Update

Fisher on Relationship Property

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Case commentary

Chapter 1 — Nature of relationship property — jurisdiction

In *Cliffe v Vercoe* [2020] NZFC 4332, [2020] NZFLR 1025, jurisdiction in a division of relationship property case was challenged on the basis of Māori sovereignty. The Judge did not accept this but noted that the Court was well accustomed to hearing such arguments. See [1.50] and [18.12].

Chapter 1 — Nature of relationship property — international jurisdiction — s 7A, Property (Relationships) Act 1976 (Application where spouses or partners agree)

In *Wooldridge v Kumari* [2021] NZHC 1975 Walker J stated that the clear terms of s 7A lend no support to the suggestion that parties can impliedly agree that the law of a country other than New Zealand is to apply. See [1.64].

Chapter 1 — Nature of relationship property — enforcement of overseas orders

In *Almarzooqi v Salih* [2020] NZHC 2441 the High Court declined the wife's application to enforce a UAE court order that the husband pay dowry because the Dubai (UAE) court did not have jurisdiction over the husband under New Zealand law. The Court of Appeal upheld the decision in *Almarzooqi v Salih* [2021] NZCA 330. See [1.66].

Chapter 1 — Nature of relationship property — enforcement of overseas orders — s 61, Trans-Tasman Proceedings Act 2010 (Setting aside registration)

A registrable Australian judgment under the Trans-Tasman Proceedings Act 2010 can be registered and enforced as if it were a New Zealand one. In *Lange v Lange* [2021] NZCA 447 registration of the Australian judgment was set aside under the s 61 exception to enforcement. See [1.66].

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

In *BW (2004) Ltd v Mlouk* [2021] NZHC 1894 where s 42 notices against 66 companies were removed even though the husband was sole director and shareholder: this did not give him a legal or beneficial interest in the properties despite arguments based on *Clayton v Clayton (Vaughan Road Property Trust)* [2016] NZSC 29, [2016] 1 NZLR 551, [2016] NZFLR 230. The corporate veil would not be pierced. See [9.17].

Chapter 10 — Meaning of property — copyright of artworks

In *Palmer v Alalaakkoloa* [2021] NZHC 2330 the High Court held that the copyright of one party in art works created during the relationship was relationship property under

s 8(1)(e) because it was included within the meaning of the phrase “other right or interest” in the definition of “property” in s 2 of the Act. See [10.3] and [11.22].

Chapter 18 — Jurisdiction, orders and implementation — sale and division of proceeds — sale order

A sale order was declined in *Panikkar v Sharma* [2021] NZFC 2251. See [18.32].

Chapter 18 — Jurisdiction, orders and implementation — occupation orders — s 27, Property (Relationships) Act 1976

In *Lobb v Ryan* [2021] NZCA 425 the focus was on the right to possess the home under the trustees’ resolution and whether this right was enough for jurisdiction to grant an occupation order. However, the applicant was already in occupation by agreement and the Court of Appeal declined an appeal. See [18.69].