IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 97/2025
[2026] NZSC 122

BETWEEN	NIGEL DAVID RIMMER AND NICOLA RIMMER Appellants
AND	CAROLYN MARY WILTON AS ADMINISTRATOR OF THE ESTATE OF DAVID RIMMER Respondent

Hearing:	17 March 2026
Court:	Winkelmann CJ, Williams, Kós, Miller and Cooke JJ
Counsel:	V T M Bruton KC, N L Walker, J B C Trezise, L S B Acland and L G Cable for Appellants S P H Elliott, J M McGuigan and B J Lupton for Respondent A S Butler KC and P D Hume for New Zealand Law Society | Te Kāhui Ture o Aotearoa as Intervener
Judgment:	4 September 2026

JUDGMENT OF THE COURT

A The appeal is allowed.

B The respondent must pay costs of $38,800 plus usual disbursements. We allow for second counsel.

C The costs award made by the Court of Appeal is set aside and replaced by an order of costs in the appellants' favour for a standard appeal on a band A basis together with usual disbursements.

D Costs in the High Court are to lie where they fall.

REASONS
(Given by Cooke J)

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[1] The appellants, Nigel and Nicola Rimmer, are the adult children of David Rimmer. Mr Rimmer died intestate in March 2016. The respondent, Carolyn Wilton, is Mr Rimmer's surviving de facto partner. Mr Rimmer and Ms Wilton entered a relationship property agreement during their relationship, the effect of which was, broadly, that if the relationship ended, the house they owned would be divided in equal shares. The appellants appeal from the decision of the Court of Appeal upholding the decision of the High Court which found that the respondent was entitled to receive her share of the house under the relationship property agreement, as well as a significant portion of Mr Rimmer's estate (of which his share of the house formed part) under the intestacy provisions of the Administration Act 1969.[1] The appellants argue that she is only entitled to her share of the house under the agreement, and that Mr Rimmer's share should be distributed to them.

[1] *Rimmer v Wilton* [2023] NZHC 1372 (Van Bohemen J) [HC judgment]; and *Rimmer v Wilton (as administrator of the estate of Rimmer)* [2025] NZCA 374, [2025] NZFLR 280 (Mallon, Thomas and Collins JJ) [CA judgment].

Background

[2] The factual material before the Court is limited, the hearing in the High Court having proceeded on the basis of a concise agreed statement of facts as summarised below.

[3] The appellants are the only children of Mr Rimmer. In September 2000, Mr Rimmer commenced living in a de facto relationship with Ms Wilton.[2]

[4] Mr Rimmer and Ms Wilton owned a property together at 99 Moumoukai Road, Hūnua, Auckland (the Moumoukai Road property) as tenants in common in equal shares.

[5] On 6 June 2002, they entered into an agreement pursuant to s 21 of the Property (Relationships) Act 1976 (the PRA) which dealt with the status, ownership and division of their property (the Agreement). The terms of the Agreement are appended to this judgment.

[6] Mr Rimmer died on 18 March 2016 without leaving a will. He and Ms Wilton were living together at the time, and she is his surviving de facto partner.

[7] On his death, Mr Rimmer's estate comprised approximately $150,000 worth of cash and investments, some personal chattels, and his interest in the Moumoukai Road property, which is the principal asset of the estate.

[8] In May 2016, Ms Wilton successfully applied to the High Court to be appointed as administrator of Mr Rimmer's estate. Ms Wilton then took steps as administrator, including:

(a) distributing some amounts of cash to herself as contemplated by s 77 of the Administration Act;

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2 We were told that Ms Wilton also has two adult children of her own.

(b) distributing Mr Rimmer's personal chattels to herself, also in accordance with s 77; and

(c) transferring to herself, as administrator, Mr Rimmer's share in the Moumoukai Road property.

[9] Ms Wilton continued living in the Moumoukai Road property without paying rent until the property was sold in May 2021 for $1.2 million.[3] No distributions have been made by her to the appellants since that time.

Legislative context

[10] The issues in this appeal arise as a consequence of provisions in the PRA and the Administration Act. Under s 61 of the PRA, when one spouse or partner dies, the surviving spouse or partner may elect one of two options—broadly, either to apply for a division of relationship property under that Act, or to receive any beneficial interest they are entitled to on the distribution of the estate. Section 61 of the PRA provides:

> **61 Surviving spouse or partner may choose option**
>
> (1) If one of the spouses or partners has died (except in a situation described in section 10D(1)), the surviving spouse or partner may choose option A or option B.
>
> (2) Option A is to elect to make an application under this Act for a division of the relationship property.
>
> (3) Option B is as follows:
>
> (a) to elect not to make an application under this Act for a division of the relationship property; and
>
> (b) if the surviving spouse or partner is a beneficiary under the will of the deceased spouse or partner, to receive that property; and
>
> (c) if the surviving spouse or partner is entitled to a beneficial interest on the intestacy or partial intestacy of the deceased spouse or partner, to receive that interest.

[3] We were told that Mr Rimmer's maximum share of the sale proceeds (together with accrued interest) is held on trust by the estate solicitors pending the outcome of this litigation.

[11] Under s 68(1), if the surviving partner does not make a formal election they are treated as having elected option B. Here, however, Ms Wilton formally elected option B on 28 April 2016.[4]

[12] Part 3 of the Administration Act then sets out how intestate estates, such as Mr Rimmer's estate, are to be distributed. Under the table in s 77, when a person dies with a de facto partner[5] and children, the de facto partner is entitled to the personal chattels of the deceased, a prescribed amount,[6] and one third of the residual estate. The other two thirds of the residual estate go to the deceased's children.

[13] Finally, s 21 of the PRA enables spouses or partners to make agreements regarding "the status, ownership, and division of their property (including future property)", for the purpose of contracting out of the PRA. The Agreement between Ms Wilton and Mr Rimmer is such an agreement.

[14] Ms Wilton says she is entitled to *both* her entitlements under the Agreement and those under the Administration Act, including:

(a) her share of the Moumoukai Road property and her personal chattels (under the Agreement);

(b) a life interest in the Moumoukai Road property (also under the Agreement); and

(c) Mr Rimmer's personal chattels, the prescribed amount of $155,000 and one third of the value of the residue of the estate, which includes his share of the Moumoukai Road property (under s 77 of the Administration Act).

[15] The appellants' key point is that Ms Wilton should not be entitled to more of the relationship property than is provided for under the terms of the Agreement.

4 See CA judgment, above n 1, at [10], n 5.
5 Or a spouse or civil union partner.
6 See Administration (Prescribed Amounts) Regulations 2009, reg 5.

They say that Ms Wilton has, by virtue of the Agreement, contracted out of the distribution rules that apply under the Administration Act.

Procedural history

High Court

[16] The appellants brought the proceeding in the High Court. At the time the statement of claim was filed in August 2022 it appears that the appellants may not have been aware of the Agreement. The claim alleged that Ms Wilton had failed to make any distributions to the appellants in the administration of the estate. This failure, and various other actions undertaken by the respondent, were said to comprise breaches of her fiduciary duty as administrator of Mr Rimmer's estate.

[17] In her statement of defence Ms Wilton pleaded the existence of the Agreement. Then, when the matter came before the High Court, it was recorded that the only matter in issue was whether, having elected option B under s 61 of the PRA, Ms Wilton was entitled to the benefit of the Agreement in relation to the Moumoukai Road property, as well as the other rights to Mr Rimmer's estate as provided for under s 77 of the Administration Act.[7] The appellants' argument at that stage was that Ms Wilton was obliged to exercise option A under s 61 of the PRA if she wanted to obtain her entitlements under the Agreement.[8] That argument had not been pleaded in the statement of claim, but was nevertheless treated as the key issue in dispute.

[18] Van Bohemen J did not accept the appellants' argument, holding instead that a surviving spouse or partner wishing to receive an entitlement under a s 21 agreement should usually elect option B, not option A.[9] He therefore held that the argument that Ms Wilton was precluded from taking relationship property under the Agreement because she had elected option B was wrong as a matter of law.[10] He accordingly found that there was no breach of fiduciary duty as Ms Wilton had been implementing the Agreement as she understood its terms.[11] Finally, the Judge recorded that there

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7 HC judgment, above n 1, at [24].
8 At [49].
9 At [58].
10 At [60].
11 At [64].

may be further issues concerning how the Agreement was implemented, but these had not been the subject of argument before him.[12]

Court of Appeal

[19] Before the Court of Appeal, the appellants' argument changed. They were granted leave to advance a further argument particularised in an amended notice of appeal—that the terms of the Agreement meant that Ms Wilton's only entitlements to Mr Rimmer's estate were as specified in the Agreement and that, on its correct interpretation, both Mr Rimmer and Ms Wilton had contracted out of the default intestacy entitlements. In the alternative, they continued to advance their argument made in the High Court that Ms Wilton was obliged to exercise option A under the PRA if she wished to receive her entitlements under the Agreement.

[20] The appellants' application to amend the ground of appeal was discussed at the hearing of the appeal. Ms Wilton opposed the grant of leave but nevertheless said she was content for the new argument to be determined provided that the Court was satisfied there was no unfair prejudice. In its judgment, the Court did deal with the new argument, explaining that it was in the interests of justice to resolve the dispute and it was satisfied it could do so without unfairly prejudicing either party.[13]

[21] In relation to the argument that Ms Wilton was obliged to choose option A, the Court of Appeal agreed with the conclusions of the High Court.[14] That argument is no longer pursued before this Court.

[22] The Court did not accept the appellants' new argument. In particular, the Court concluded that the stated purposes in the Agreement did not relate to what each party

12 At [65]. The unaddressed issues included whether cl 4.2 applied on the death of one of the parties, and whether cl 4.4 gave a right to occupancy rent free, and a lifetime right to the proceeds of the sale of the property: at [25].
13 CA judgment, above n 1, at [4] and [65].
14 At [43].

could do with their separate property or their share of the relationship property in the event of their death.[15] The Court said:

> [57] Clause 4.4 is the only clause specifically directed at meeting the purpose of determining their respective share of the relationship property in the event of the death of one of them. It provided that in the event of the death of one of them, the other had the right to "lifetime occupancy and use of all relationship property". It did not purport to place any other limit on what each of the parties could do with their estate.
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> …
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> [62] The Agreement therefore left open the possibility that their respective wills could provide what share (if any) of the relationship property they were gifting to their surviving spouse, as well as what share (if any) of their separate property they wished to give. Each party was free to leave the other none, some or all of their share of the relationship property or their separate property, but subject to the provision they had each made in the Agreement to grant the other a lifetime occupancy and use of the [Moumoukai Road] property. The Agreement also did not exclude entitlements on an intestacy.
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> [63] It follows, in our view, that the Agreement did not preclude Ms Wilton electing Option B. The effect of doing so was that she received her separate property and her share of the relationship property in accordance with the Agreement. She was also entitled to her entitlements under the intestacy provisions in relation to Mr Rimmer's separate property and his share of the relationship property. Under the Agreement she was also entitled to the lifetime occupancy and use of the [Moumoukai Road] property.

Application for leave to appeal

[23] On 31 October 2025, the appellants were granted leave to appeal to this Court. Whilst leave to appeal was granted in general terms, the Court asked the parties to focus on the interplay between agreements under s 21 of the PRA and entitlements under the Administration Act. The parties were told that submissions should address whether, if option B is elected, the surviving partner may receive their entitlements under a will or intestacy and also rely on a s 21 agreement.[16]

[24] The New Zealand Law Society | Te Kāhui Ture o Aotearoa (NZLS) applied for leave to intervene on the basis that the appeal would have practical implications for family lawyers, and lawyers working in the property and transactional areas,

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15 At [52].

16 *Rimmer v Wilton (as administrator of the estate of Rimmer)* [2025] NZSC 150 (Ellen France and Kós JJ) at [1].

amongst others. Leave to intervene and to provide written and oral submissions was granted by the Court.

Submissions on appeal

Appellants' submissions

[25] As noted above, the appellants now rely solely on their argument that the terms of the Agreement define Ms Wilton's only entitlements to Mr Rimmer's estate and that she has no further entitlements under the intestacy provisions of the Administration Act.

[26] Ms Bruton KC and Mr Walker, for the appellants, relied on the decision of the High Court in *Warrender v Warrender* as authority for the proposition that parties may contract out of their entitlements under the Administration Act.[17] In these circumstances, a surviving partner is not required to disclaim their rights on the intestacy of the deceased partner under s 81 of the Administration Act because they have already agreed to forgo their intestacy entitlements.

[27] In the appellants' submission, whether a surviving partner in the position of Ms Wilton can receive both relationship property entitlements and succession entitlements will depend on the ownership arrangements in place, the correct construction of the s 21 agreement, and the terms of any will. Section 21 agreements are binding on death and apply in accordance with their terms irrespective of the option chosen under s 61 of the PRA by the surviving partner.

[28] The appellants argued that s 21 agreements should be interpreted in accordance with standard contractual interpretation principles, and in light of the context that s 21 of the PRA allows parties to reach their own agreements as to the classification and division of their property. On the correct interpretation of the Agreement, each party had contracted out of their default rights on the other's intestacy. In particular, Ms Wilton had agreed that her only entitlement to the Moumoukai Road property on

[17] *Warrender v Warrender* [2013] NZHC 787, [2013] NZAR 603. See also *O'Donoghue v Comia* [2023] NZHC 2735 at [33].

Mr Rimmer's death was her own share as specified in the Agreement, and the lifetime occupancy referred to in cl 4.4.

Respondent's submissions

[29] For the respondent, Mr Elliott and Ms McGuigan supported the reasoning of the Court of Appeal. They argued that, under s 61 of the PRA, a surviving partner who chooses option B may receive entitlements under both a s 21 agreement and a will or intestacy. This does not involve double recovery, but simply involves the operation of the s 21 agreement and the Administration Act distribution requirements.

[30] It was submitted that Ms Wilton did not contract out of the intestacy provisions in the Administration Act. None of the provisions in the Agreement purport to place any limit on what each party could do with their estate and neither was there a formal disclaimer under s 81 of the Administration Act. Once Ms Wilton elected option B, she was entitled to the benefit of the intestacy provisions and of the Agreement. She was not required to make a claim of the kind barred by cl 5.1 of the Agreement, as the appellants contend.[18] The idea of contracting out is also incompatible with the distribution rules in the Administration Act, which are mandatory.[19] In the respondent's submission, this is apparent from the parliamentary debates preceding the 2001 amendments to the Administration Act that accompanied the legislative reforms of the PRA.[20] For this reason, the decision in *Warrender* was wrong. In any event, *Warrender* is distinguishable given the Agreement here was made under s 21, whereas the agreements in *Warrender* would now be classified as having been made under ss 21A and 21B.

[31] The respondent also argued that there are strong policy reasons supporting the Court of Appeal's approach, including the need for certainty and predictability.

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18 Clause 5.1 provides that the Agreement is in "full and final settlement of all claims which each of [the parties] may have against the other under any statute whatsoever or at common law or at equity". The respondent submits that "claims" in cl 5.1 is an inapt description of gifts under a will or intestacy entitlements.

19 Counsel noted in particular the significance of the substitution of the word "shall" in the original version of s 77 for "must" in the phrase "[the] estate must be distributed", relying on this Court's decision in *Fukofuka v R* [2013] NZSC 77, [2014] 1 NZLR 1—although counsel acknowledged the quite different context in which that decision arose.

20 Referring to (27 March 2001) 591 NZPD 8522–8523 and 8533.

Finally, there was no need for a different approach from that taken by the Court of Appeal—as Te Aka Matua o te Ture | Law Commission had said, parties can simply make a will if they wish to displace the intestacy regime.[21] Mr Rimmer did not do so. Freedom of contract does not bite with particular force in this context.

Intervener's submissions

[32] For the NZLS, Mr Butler KC did not address the correct interpretation of the Agreement, but instead focused on how the PRA was intended to apply in light of agreements made under the PRA. He argued that the s 61 options are not apt in cases where the parties have regulated their entitlements in the event of one of their deaths in a s 21 agreement. If the terms of the agreement govern the position as to the division of relationship property on death, there is no cause for the surviving partner to make an election under s 61 in respect of the matters the agreement covers.

[33] Mr Butler accepted that, where a surviving partner wishes to apply to have the agreement set aside for serious injustice under s 87, they should elect an option under s 61. This is because the purpose of setting aside the s 21 agreement in such circumstances is to enliven the PRA provisions that would otherwise have been contracted out of. But, usually, the option under s 61 is only applicable to the extent that the agreement does not deal with the division of relationship property on death. In oral argument, he argued it was telling that there is no third option where the surviving party chose to receive their entitlements under an agreement—if s 61 applied in cases involving such an agreement, there would be such an option.

[34] Mr Butler also questioned the relevance of disclaimer under s 81 of the Administration Act, explaining that disclaimer is a unilateral act undertaken by the intended recipient of a gift. He suggested that the law of contract applied instead, arguing that the analysis of Woodhouse J in *Warrender* was correct.

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21 Te Aka Matua o te Ture | Law Commission *Review of Succession Law: Rights to a person's property on death | He arotake i te āheinga ki ngā rawa a te tangata ka mate ana* (NZLC IP46, 2021) at [11.8].

Our analysis

[35] The primary issue on appeal is whether, having elected option B, the Agreement determines Ms Wilton's entitlements on Mr Rimmer's death, or whether she also retains her intestacy entitlements under s 77 of the Administration Act. This must be determined with reference to the terms of the Agreement, the Administration Act and the PRA.

[36] Before coming to our conclusions on this question, we deal with the issue of procedural fairness raised by the respondent.

Procedural fairness

[37] As indicated above, when these proceedings were commenced in the High Court the statement of claim raised no issue about the proper interpretation of the Agreement, and it appears that the appellants may not have been aware of its existence at that time. The pleading was focused on the lack of any distributions by Ms Wilton to the appellants. But Ms Wilton raised the existence of the Agreement in her statement of defence, and the argument that proceeded before the High Court did address the effect of the Agreement.[22] Even then, it did not raise any question of interpretation but rather was focused on whether a party in Ms Wilton's position was obliged to elect option A if they wished to receive entitlements under an agreement made under s 21 of the PRA.

[38] Before the Court of Appeal, the appellants applied to amend the notice of appeal so that it extended to cover the argument that the parties had contracted out of the right to receive distributions under the Administration Act. As noted, the High Court did not address this argument, and neither party had the opportunity to file evidence in relation to it. Initially that featured as a basis of the respondent's opposition to the amendment in the Court of Appeal. At the hearing before that Court, without conceding that leave to amend should be granted, the respondent accepted that

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[22] See above at [16]–[17].

the argument could be dealt with if the Court of Appeal was satisfied there was no unfair prejudice.[23] The Court then granted leave.[24]

[39] Before us, the respondent again challenged the way in which the appellants' argument had changed in the Courts below. Mr Elliott submitted that the appellants had conceded all the issues of broader public importance on which leave to appeal to this Court was granted. Their argument, in his submission, now turned on a fact-specific construction issue about the effect of the Agreement—something this Court has no evidence on despite, he argued, there being evidence available.

[40] We are satisfied that there is no procedural unfairness with this argument now being addressed by us. That is so for three related reasons. First, the respondent conceded in the Court of Appeal that the question could be determined provided the Court was satisfied there was no unfair prejudice, and she did not seek to file further evidence. Indeed any further evidence that she said is needed to fairly address the interpretation arguments has not been formally identified. Secondly, the issues of interpretation are able to be addressed by us without any such evidence given that the terms of the Agreement, and its general context, are apparent. Finally, the Court of Appeal granted leave to amend, and this Court has now given leave to appeal. In these circumstances the new argument is properly before the Court. It raises issues of wider importance. We accordingly consider we should address the issues that have been argued before us on their merits.

[41] We agree with Mr Elliott, however, that there are further issues that may arise which are not appropriate for us to address, similar to those which the High Court noted it was not determining.[25] For the avoidance of doubt we summarise these issues below at [76].

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23 See above at [19]–[20].

24 Leave was granted only in part: CA judgment, above n 1, at [65]. The Court of Appeal declined leave to amend the notice of appeal to also consider the effect of the right to lifetime occupancy and use of the Moumoukai Road property in cl 4.4 of the Agreement following the property's sale: at [64].

25 See above n 12.

Terms of the Agreement

[42] The outcome of this appeal turns on the correct interpretation of the terms of the Agreement in light of the provisions of the Administration Act and the PRA. Whilst there has been considerable debate over whether the current legislative framework is appropriate in relation to the entitlements of parties to relationship property on death, we do not consider that this debate affects the outcome of this appeal.[26]

[43] The correct approach to interpreting the Agreement involves identifying the meaning which the Agreement would convey to a reasonable person having all the background knowledge which was reasonably available to the parties in the situation which they were in at the time of making the contract.[27] The proper interpretation of legislation involves deriving the meaning from the text of the enactment in light of its purpose and its context.[28] Here the Agreement is of the kind contemplated by s 21 of the PRA, and the terms of the PRA contemplate the application of the Administration Act. So the questions of contractual and statutory interpretation are inherently interlinked.

[44] We accept Ms Bruton's submission that the PRA generally preserves the right of the parties to agree on their property rights, subject to statutory safeguards. The Agreement commences with recitals setting out the background to the Agreement including, in recital E, an expression by the parties of what the operative terms of the Agreement were intended to achieve. Recital E provides:

> E Caroline and David wish to enter into a contracting out agreement pursuant to Section 21 of the [PRA], with respect to the status, ownership, and division of their property (including future property), which is to provide for the following:
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> …

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[26] See for example Te Aka Matua o te Ture | Law Commission *He arotake i te āheinga ki ngā rawa a te tangata ka mate ana | Review of succession law: rights to a person's property on death* (NZLC R145, 2021) [Succession report]; and Nicola Peart "The Property (Relationships) Amendment Act 2001: A Conceptual Change" (2008) 39 VUWLR 813.

[27] *Firm PI 1 Ltd v Zurich Australia Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 at [60] per McGrath, Glazebrook and Arnold JJ.

[28] Legislation Act 2019, s 10(1).

(c) Define the share of the relationship property, or any part of the relationship property, that the survivor of Caroline or David and the estate of the deceased partner is to be entitled to on the death of either of the parties;

[45] This recital corresponds to s 21D(1)(c) of the PRA, which is one of five examples given as to what agreements made under ss 21, 21A or 21B may address.[29] Whilst recital E records the parties' intentions in standard terms, it nevertheless says that, through the terms of the Agreement, the parties intended to identify the relationship property each of them was entitled to on the death of the other. We consider this significant.

[46] Clause 2 concerns the parties' separate property. Clause 2.1 provides that "the other party shall make no demand on that separate property including any increase in the value thereof". Mr Rimmer's separate property is identified in sch B as his "personal possessions of whatsoever nature and kind as are in the possession of or owned by [Mr Rimmer] in his own name absolutely". As the appellants submit, on the face of it, Ms Wilton's claim to Mr Rimmer's personal possessions is not consistent with cl 2.1. But the argument before us was largely centred on the rights to the Moumoukai Road property, which was identified as relationship property controlled by other clauses.

[47] We agree with the respondent and the Court of Appeal that one purpose of the Agreement was to comprehensively identify what was to be separate property and what was to be relationship property.[30] The Agreement also addresses the division of relationship property in the event of the death of one of the parties. Clause 4.1 of the Agreement provides that the property in sch C is relationship property—principally, the Moumoukai Road property. The other operative terms in cl 4 record the parties' agreement about the division of the Moumoukai Road property as relationship property. Clause 4.2, upon which Ms Wilton relies, specifies that if "the parties should separate or cease to live together as parties to a de facto relationship" then their

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29 Section 21A concerns settlement agreements made between spouses or partners to resolve differences that have arisen concerning property owned by either or both of them. Section 21B relates to agreements made between a surviving spouse or partner and the personal representative of their deceased spouse or partner as to the status, ownership and division of property, where the latter spouse or partner died before proceedings under the Property (Relationships) Act 1976 were commenced or completed.

30 CA judgment, above n 1, at [55].

relationship property is to "be divided between the parties in the same proportions as the value of each of their capital contributions to such property bears to the total value of such property". We understand that, assuming this clause applies on the death of one of the parties,[31] its application would result in Ms Wilton receiving a 56.45 per cent interest in the proceeds of the sale of the Moumoukai Road property, rather than the 50 per cent interest arising from the common ownership in equal shares.

[48] Relevantly, cl 4.4 also provides:

> 4.4 In the event of the death of one party, the remaining party shall have the right to lifetime occupancy and use of all relationship property. The right of occupancy shall be extinguished in the event of the death of the survivor.

[49] Clause 4.4 is significant as it created a life interest—an estate in land, in this case contingent on the death of the donor and the survival of the donee—in the other party's share of the Moumoukai Road property.

[50] Also critical for the purposes of this appeal is cl 5.1, which provides:

> 5.1 That subject to the provisions of this agreement the parties agree that this agreement shall be in full and final settlement of all claims which each of them may have against the other under any statute whatsoever or at common law or at equity.

[51] We consider that, read together, cls 4.4 and 5.1 make it clear that Ms Wilton's entitlement to the Moumoukai Road property was limited to her share, with no entitlement to Mr Rimmer's share apart from the life interest given in cl 4.4.

[52] This is further reflected in cls 4.5 and 4.6. These prevented either party creating any encumbrance over "any relationship property or any share of such property" without written consent of the other party, and, if any money borrowed against the relationship property was used for the sole benefit of one party, created an indemnity in favour of the other party.

[53] Collectively these clauses reflect a comprehensive disentitlement to a beneficial interest in the other party's share of the Moumoukai Road property. It is

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31 See below at [76(b)].

also plain that these terms were intended to regulate the position after death. This is further confirmed by cl 6.1, which specifies that the Agreement is binding on "executors, administrators and personal representatives" of both parties.

[54] In short, we consider that the parties agreed that their entitlement to the Moumoukai Road property on death was limited to their own share and a life interest in the other's share. In combination, the terms would give the survivor the comfort of a lifetime right to exclusive possession of the entire property. Apart from that life interest, they both agreed not to make any claim to the other's share.

Does the Agreement regulate intestacy entitlements?

[55] The key issue is whether the terms of the Agreement prevented either party from claiming an entitlement to the other party's share of the Moumoukai Road property in the event of their death where that entitlement arises under the intestacy provisions of the Administration Act. This ultimately depends on whether receiving such a share is inconsistent with cl 5.1, interpreted in the context of the Agreement as a whole and the statutory provisions. For the reasons below we consider that it is. We therefore do not accept the respondent's argument that the Agreement was not legally effective in displacing the entitlements that would otherwise arise under the Administration Act.

[56] We agree with the Court of Appeal that the Agreement did not prevent either Mr Rimmer or Ms Wilton from voluntarily giving to the other a further interest in their separate property or in their share of the relationship property.[32] Such gifting is not inconsistent with the Agreement or with the life interest already granted. The most obvious way to so gift further property would be by bequest in a will. We also agree with Mr Elliott's submission that there is nothing inconsistent about the surviving partner receiving entitlements under a s 21 agreement as well as under a will and that this does not involve double recovery. So Mr Rimmer could have bequeathed his share of the Moumoukai Road property to Ms Wilton. He could also have achieved this by transferring his share of the property to her before he died. Either option would have

[32] CA judgment, above n 1, at [62].

been legally effective, and would have merged Mr Rimmer's underlying beneficial interest with Ms Wilton's life interest.

[57] But that is not what Mr Rimmer did. He did not gift, or otherwise grant, Ms Wilton any further interest in his property. In these circumstances we consider that the Agreement still regulates the position. As we conclude above, it provides that she had no entitlement to his share other than the life interest given by cl 4.4.

[58] Clause 5.1 is expressed in terms that suggest it was intended to be comprehensive—preventing "all claims … under any statute whatsoever or at common law or at equity". We accept Ms Bruton's submission that receiving an entitlement under the Administration Act involves making a claim under that Act. While the distributions contemplated by s 77 of the Administration Act are generally mandatory, there are exceptions in ss 77A–77C, and under s 81 a person may disclaim an interest. Section 81 prescribes how a disclaimer is to be effected and also provides:

> (6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.

[59] We agree with the view of Woodhouse J in *Warrender*, following that of the Appellate Division of the Alberta Supreme Court in *Re Rist*, that it is possible for partners to contract out of their rights to succeed on an intestacy.[33] That approach is broadly consistent with the view historically taken in England and Canada.[34] The position is clearer here because the PRA contemplates that parties may create agreements defining their property entitlements on one of their deaths. We do not consider it material that *Warrender* concerned a settlement agreement and a compromise agreement, of the kind now made under ss 21A and 21B, rather than a contracting-out agreement of the kind now made under s 21. In *Warrender*, Woodhouse J held that a compromise agreement was not a disclaimer under s 81, but it was nevertheless binding and effective.[35] We consider that s 81(6) makes it clear that it is possible to contract out of Administration Act entitlements, and that this can

33 *Warrender*, above n 17, at [21] and [35] citing *Re Rist* [1939] 2 DLR 644 (ABSC AD). See also *O'Donoghue*, above n 17, at [21]–[33]; and John Earles and others *Dobbie's Probate and Administration Practice* (7th ed, LexisNexis, Wellington, 2025) at [29.3.2].

34 *Gurly v Gurly* (1842) 8 Cl & Fin 743 at 761, 8 ER 291 (HL) at 298; and *Stern v Sheps* (1967) 61 DLR (2d) 343 (MBCA) at 344–348 per Monnin JA, aff'd [1968] SCR 834 at 838.

35 *Warrender*, above n 17, at [42]–[46].

be achieved by an agreement entered under ss 21–21B of the PRA. We do not accept the respondent's submission that an agreement contracting out of the Administration Act distributions is incompatible with that Act and cannot be enforced, nor her submission that such an agreement is not a will and cannot have the legal consequences of a will unless it is declared valid under s 14 of the Wills Act 2007. Given s 21D(1)(c) of the PRA and s 81(6) of the Administration Act, parties may contract out of their statutory entitlements to relationship property on death.

[60] Ms McGuigan submitted that it is apparent from the parliamentary debates preceding the enactment of the Property (Relationships) Amendment Act 2001 that Parliament intended that parties would not be able to contract out of their entitlements under the Administration Act.[36] But the passages she referred to were not from a select committee report, nor a speech of the responsible Minister, and we do not place weight on them. Rather, we focus on the terms of the legislation and the Agreement.

[61] Clause 5.1 of the Agreement is a contractual promise by each party not to make any claims against the other's property. There is no material difference between disclaiming and not claiming in this context—by this clause Ms Wilton promised not to claim an entitlement to Mr Rimmer's share, including on his death. The Agreement is either a pre-existing disclaimer within the meaning of s 81(6) of the Administration Act, or a contractual promise to disclaim under the process contemplated by s 81(1) which can be enforced, perhaps by way of specific performance requiring a deed of disclaimer to be provided. For that reason, we do not think it significant that a disclaimer under s 81 is made after death. To interpret the terms of the Agreement and the legislation otherwise would be to give the Agreement an overly literal interpretation, and it would also involve a failure to give the legislation a purposive interpretation. We conclude below that this interpretation is also consistent with the PRA regime.[37]

[62] The Court of Appeal considered the language of s 77 mandatory, and said that while s 77 entitlements can be disclaimed in accordance with s 81, there was no deed

36 (27 March 2001) 591 NZPD 8522–8523 and 8533.
37 Below at [64]–[74].

of disclaimer in this case.[38] The Court further considered that "claim"—as used in cl 5.1 of the Agreement—is an inapt description of intestacy entitlements. The Court said that cl 5.1 was intended to address the potential for the common law or equity to apply, for instance if the relationship ended before three years.[39] As to cl 6.1, the Court said that clearer words would have been necessary to override the otherwise mandatory terms of s 77 of the Administration Act.[40] We consider the Court's interpretation is unduly narrow, especially given the Agreement was intended to identify what the parties' entitlements would be on death.[41] We also consider this interpretation inconsistent with the PRA, as we address in more detail below.

[63] The distributions contemplated by the Administration Act are also not properly regarded as the deceased's deemed intentions having the same status as bequests in a will, such that it can be said that Mr Rimmer gifted a further share in the Moumoukai Road property to Ms Wilton. Rather, the statutory distribution scheme under s 77 applies when the deceased has failed to express testamentary intentions.[42] Mr Rimmer did not express any intention to give Ms Wilton his share of the Moumoukai Road property. On the contrary, he agreed with her that she had no entitlement to his share, as he had none against hers. He did so in an agreement that was expressed to apply on death, binding both the parties and the executors of their estates.

Relevance of the Property (Relationships) Act 1976

[64] The conclusions above are confirmed when the Agreement is considered in the context of the PRA. The Agreement is of the kind contemplated by s 21 and should be interpreted in light of both that provision and the remainder of the PRA. Section 21D provides that agreements made under ss 21, 21A or 21B may, amongst other things:

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38 CA judgment, above n 1, at [47]–[49].
39 At [60].
40 At [60]–[61].
41 See above at [44].
42 In its Succession report, above n 26, at [7.12], Te Aka Matua o te Ture | Law Commission said: "The intestacy rules are designed to reflect what most people who die intestate would do with their estate had they made a will."

(c) define the share of the relationship property, or of any part of the relationship property, that the surviving spouse or partner and the estate of the deceased spouse or partner is to be entitled to on the death of one of the spouses or partners:

[65] This is further reflected in s 1M(c) of the PRA which provides that one of the purposes of the PRA is "to provide for a just division of the relationship property between the spouses or partners when their relationship ends by separation or death". Section 21(2)(b) provides that an agreement contracting out of the PRA can relate to the "division of property … when one of the spouses or partners dies". As noted above, the wording of s 21D(1)(c) was carried through into recital E(c) of the Agreement.[43]

[66] The terms of s 21D(1)(c) go further than saying that parties may contract out of the provisions of the PRA that regulate the division of relationship property on death. It refers to an agreement defining the *share* of the relationship property, or any part of that property, that a party is entitled to on the death of the other. Given that it would remain possible for a party to bequeath such a share in a will, the provision appears to contemplate the agreement defining the surviving party's entitlements on the other's intestacy, or at the very least to include those entitlements.

[67] The broader scheme of the PRA is consistent with this view. Part 8 contains detailed provisions concerning the entitlements arising under the PRA, or under a will or on an intestacy, when one spouse or partner dies. Section 61 provides that the surviving partner may opt for a division of the relationship property under the PRA (option A) or, alternatively, to receive their entitlements under the deceased partner's will or on their intestacy or partial intestacy (option B). Under s 68(1), a failure to make an election means the party is treated as having chosen option B. Ms Wilton elected option B.

[68] There is nothing in these provisions to suggest that an agreement made under any of ss 21–21B is only binding if option A is chosen. Sections 21–21B enable parties to make agreements defining the share of the relationship property that the

43 Above at [44]–[45].

surviving spouse or partner is entitled to on the death of the other, regardless of the election of either option A or option B.

[69] If the surviving spouse or partner chooses option A, s 76(3) provides that the surviving spouse or partner has no entitlement under the Administration Act. Section 76(1) provides that the surviving spouse or partner will likewise receive no entitlement under the deceased's will unless the will "expresses a contrary intention". Under s 77 the court may determine that the surviving spouse or partner is entitled to receive entitlements under the deceased's will or on their intestacy, notwithstanding the election of option A, provided the court is satisfied that this is necessary to avoid injustice.

[70] The provisions concerning the division of property if the surviving spouse or partner chooses option B still contemplate that the Agreement can regulate the position. Section 95(1) provides that the distribution provisions of the Act do not apply when option B has been chosen. Section 95(2) then expressly provides that the selection of option B—whether actual or deemed—"does not prevent that person from disclaiming any interest as a beneficiary" under the deceased spouse or partner's will or under the Administration Act. This is an explicit statutory reference to disclaimer under s 81 of the Administration Act as part of the overall PRA property division regime. We consider that it contemplates a disclaimer as a consequence of a s 21 agreement regulating the parties' entitlements on death. We also note that s 61(3)(c) contemplates a party receiving distributions under the Administration Act only if the surviving partner "is entitled to a beneficial interest". They will not be so entitled if they have contractually promised not to claim such an interest in an agreement authorised by the PRA.

[71] Finally, other provisions continue to apply irrespective of the option chosen. These include s 69, which specifies when the election made under s 61 may be set aside, and s 87, which concerns the ability to challenge a s 21 agreement under s 21J if it would cause serious injustice.[44] It is apparent that such an agreement can identify

[44] Section 87 also provides for the surviving spouse or partner to apply for a declaration that a s 21 agreement is void for non-compliance with the formal requirements set out in s 21F.

the share of relationship property a surviving partner is entitled to on the intestacy of the other, subject to the court's powers under s 87.

[72] It is accordingly apparent that agreements authorised under ss 21–21B of the PRA can regulate what the parties are entitled to on death regardless of which option is chosen, and whether or not the deceased spouse or partner left behind a will. Indeed, as we say, given that a party can always give more property to the other, including under a will, an obvious way such agreements can determine what share of relationship property a surviving party is entitled to on the other's death is by controlling the entitlements otherwise arising under the intestacy provisions of the Administration Act. This is contemplated by s 21D(1)(c) of the PRA and recital E(c) of the Agreement. Section 95(2) of the PRA likewise explicitly contemplates such disclaimer. Depending on the terms of the agreement in any given case, a surviving partner may be contractually required to disclaim an entitlement to property under the Administration Act.

[73] Finally, if the parties agree on their entitlements on intestacy in this way, the court has jurisdiction to set aside the agreement under ss 87 and 21J if giving it effect would cause serious injustice.

[74] This is a comprehensive statutory scheme, and the Agreement the parties entered here is consistent with it. For these reasons, we essentially agree with Mr Butler's submission that, when there is an agreement that comprehensively determines entitlements to property, the choice referred to in s 61 is less practically significant, and may become irrelevant. Section 68 deeming option B still applies if no choice has been made, and other provisions, such as ss 87 and 21J, may still be engaged. But the formal option applicable under s 61 will have less significance.

Conclusions

[75] For the above reasons, we consider that the Court of Appeal erred. On the correct interpretation of the Agreement, Ms Wilton is not entitled to receive a further share of the Moumoukai Road property under the provisions of the Administration Act. Under the Agreement, she accepted entitlement to a life interest in Mr Rimmer's share of the Moumoukai Road property and no more. She promised

not to claim, and accordingly to disclaim, any beneficial interest in his share of that property. The appeal should be allowed and the appellants entitled to judgment as specified in [1.3(a)–(c)] of the appellants' first amended notice of appeal in the Court of Appeal dated September 2024.

[76] It is appropriate to record the issues that we have not addressed. In particular:

(a) We do not determine whether Ms Wilton was entitled to be the administrator of Mr Rimmer's estate in accordance with r 27.35 of the High Court Rules 2016 and s 6 of the Administration Act.

(b) We do not address whether Ms Wilton's interest in the Moumoukai Road property is to be identified under cl 4.2 of the Agreement because Mr Rimmer's death meant that the parties had separated or ceased to live together in the manner contemplated by that clause, rather than her entitlement being assessed as an equal share.

(c) We do not address whether Ms Wilton's life interest in Mr Rimmer's share under cl 4.4 came to an end when Ms Wilton sold the Moumoukai Road property.

[77] We also record that, whilst the respondent has been unsuccessful, there should be no criticism of the stance that she adopted. Neither can she be criticised for seeking appointment as administrator given her understanding that she was entitled to benefit from Mr Rimmer's estate. The legal position is complex, and she succeeded in both Courts below. The Law Commission has recorded concerns with the complexity of the current law, arguing that it ought to be reformed.[45] We share that view.

[78] As to costs, the appellants are entitled to costs in this Court as the successful party. We were asked to address costs in the Courts below. We consider the appellants are entitled to costs in the Court of Appeal. The costs order of the Court of Appeal is set aside and replaced by an order of costs in the appellants' favour for a standard appeal on a band A basis together with usual disbursements.

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45 Succession report, above n 26, at [4.86]–[4.91].

[79] Costs are not payable from the assets of the estate.

[80] The order of costs in the High Court in the respondent's favour is set aside. It is not fair for the appellants to be awarded costs in the High Court, however. The argument that has prevailed was not advanced in that Court. We accordingly consider the appropriate order in that Court is that the costs should lie where they fall.

Result

[81] The appeal is allowed.

[82] The respondent must pay costs of $38,800 plus usual disbursements. We allow for second counsel.

[83] The costs award made by the Court of Appeal is set aside and replaced by an order of costs in the appellants' favour for a standard appeal on a band A basis together with usual disbursements.

[84] Costs in the High Court are to lie where they fall.

Solicitors:
Rout Milner Fitchett, Nelson for Appellants
Insight Legal Ltd, Auckland for Respondent
B A Jones, New Zealand Law Society | Te Kāhui Ture o Aotearoa, Wellington for Intervener

Appendix: s 21 agreement

AGREEMENT made the 6 day of June 2002

BETWEEN	**CAROLINE MARY WILTON** of Papakura, Librarian ("Caroline")
AND	**DAVID ROBERT RIMMER** of Papakura, Cabinetmaker ("David")

BACKGROUND:

A. Caroline and David have been living in a de facto relationship as defined by section 2D of the Property (Relationships) Act 1976 ("the Act") since September 2000 ("the relationship").

B. Caroline's property is set out in Schedule A.

C. David's property is set out in Schedule B.

D. Relationship property is set out in Schedule C.

E. Caroline and David wish to enter into a contracting out agreement pursuant to Section 21 of the Act, with respect to the status, ownership, and division of their property (including future property), which is to provide for the following:

   (a) Provide that any property, or any class of property, is to be relationship property or is to be separate property;

   (b) Define the share of their relationship property, or any part of the relationship property, that Caroline and David are to be entitled to if the relationship ends;

   (c) Define the share of the relationship property, or any part of the relationship property, that the survivor of Caroline or David and the estate of the deceased partner is to be entitled to on the death of either of the parties;

   (d) Provide for the calculation of those shares;

   (e) Prescribe the method by which the relationship property, or any part of the relationship property, is to be divided.

CAROLINE AND DAVID AGREE:

1. INTERPRETATION

1.1 Property as used with reference to all property held by the parties separately, jointly or as tenants in common means the equity of the parties in the asset in question after deducting from the gross value of that asset all liabilities charged against that asset.

2. SEPARATE PROPERTY

2.1 Subject to clause 3 of this agreement, the parties do hereby agree and declare that the following property shall at all times in the future be the absolute and separate property of the party recorded as the owner, registered proprietor or person entitled to ownership at law or in equity (as the case may be), together with all increases in value thereof and the other party shall make no demand on that separate property including any increase in value thereof:

2.1.1 All that property owned by Caroline as set out in Schedule A to this agreement, and all that property owned by David as set out in Schedule B to this agreement, it nevertheless being expressly agreed by and between the parties that neither Schedule A nor Schedule B to this agreement is intended to be exhaustive, each of the parties having further property owned by them at the date of this agreement and which has not been included in the Schedules; and

2.1.2 Property acquired (whether before or after the date of this agreement) from a third party by way of gift, succession or survivorship or as a beneficiary under or pursuant to any trusts; and

2.1.3 Property acquired for an inadequate consideration from third party relatives to the extent of the inadequacy of consideration; and

2.1.4 Property acquired by incurring a liability subsequently forgiven by way of gift to the extent of that gift; and

2.1.5 Any form of property into which the foregoing property referred to above or the proceeds derived from the sale of the property may subsequently pass and any increase in value thereof.

AND SUBJECT TO Clause 3 of this agreement the status of the foregoing property referred to above as separate property shall not be affected by the use to which the property is put or by which party receives the benefit or by any amalgamation with other property in co-ownership or by any statutory classification of the property which for the time being represents the property.

3. INTERMINGLING OF SEPARATE PROPERTY

3.1 If any item of separate property shall become so intermingled with property held by the parties jointly or as tenants in common so as to make the separate identification of that separate property impracticable, the whole of the intermingled property shall be property held by the parties jointly or as tenants in common, but the former owner of the intermingled separate property shall have a charge on the whole of the intermingled property to secure payment of a sum in compensation for the loss of the former separate property. The sum payable by way of compensation shall be calculated having regard to the last known value of the separate property before it was intermingled and shall be paid in priority to the division of all other property held by the parties.

4. RELATIONSHIP PROPERTY

4.1 The parties do **HEREBY AGREE AND DECLARE** that the property owned by them jointly or as tenants in common as set out in Schedule C of the agreement shall be relationship property.

4.2 That in case the parties should separate or cease to live together as parties to a de facto relationship, all relationship property as set out in Schedule C and all other property which may hereafter be acquired by the parties jointly or as tenants in common shall, after the removal of those items of separate property referred to in Schedules A and B hereto including any increase in value thereof at the time of division, together with any other items deemed to be separate property pursuant to Clause 2 of this agreement, be divided between the parties in the same proportions as the value of each of their capital contributions to such property bears to the total value of such property.

4.3

(i) That in case the parties should separate or cease to live together as parties to a de facto relationship, either party may give written notice to the other of the desire of that party to terminate their sharing in any relationship property (which shall be deemed to include all other property acquired by the parties jointly or as tenants in common) ("the Termination Notice").

(ii) The party who receives the Termination Notice shall have the first option to purchase the share of the other party in the relationship property. This option shall be exercised no later than two (2) months after the date upon which that party received the Termination Notice. The option shall be exercised by written notice to the other party of the intention to purchase the share of that party. If this option is exercised then settlement shall take place no later than three (3) months after the notice of intention to purchase has been delivered to the other party.

(iii) If the option under paragraph 4.3(ii) shall not have been exercised within the prescribed time or shall have been waived then the other party shall have the second option to purchase the share of the other party in the relationship property on the same terms and conditions as those set out in paragraph 4.3(ii) with time running from the date of waiver of the first option or from the expiration of the period of two (2) months within which that option could have been exercised whichever is the earlier.

(iv) For the purposes of the option of either party to purchase, the value of the relationship property shall be fixed in accordance with a current market valuation provided by a registered valuer or to be agreed upon by the parties. If the parties cannot agree then the valuation shall be determination by a single arbitrator appointed by the President for the time being of the Law Society for the area in which the parties were last residing together whose valuation shall be binding on both parties and who shall share the cost of such valuation equally.

(v) If neither party exercises his or her option to purchase or both parties waive their respective options to purchase then the relationship property shall immediately be placed on the market for sale at a price agreed upon by the parties and sold and the net proceeds of sale (after payment of all mortgages, charges, real estate agents commission, reasonable legal expenses of and incidental to the sale) shall be paid to the parties in the proportions set forth in paragraph 4.2. If the parties cannot agree upon a market price from time to time, then the price shall be fixed from time to time by a registered valuer to be agreed upon by the parties. If the parties cannot agree then the question shall be determined by a single arbitrator appointed by the President for the time being of the Law Society for the area in which the parties were last residing together whose determination shall be binding on both parties.

4.4 In the event of the death of one party, the remaining party shall have the right to lifetime occupancy and use of all relationship property. The right of occupancy shall be extinguished in the event of the death of the survivor.

4.5 No party shall pledge, charge or encumber any relationship property or any share of such property, in any manner whatsoever without the written consent of the other party, and with respect to dealings concerning such property, each party shall at all times act in the utmost good faith towards the other.

4.6 If either party shall with the consent of the other borrow additional money ("additional money") on the security of the charge over any relationship property which additional money is not expended on such property but is used for the purposes of that party alone, the party borrowing such money shall protect the other's share in the relationship property and shall keep indemnified the other party, his/her estate administrators, executors and assigns from and against all actions, costs, claims, damages and expenses arising out of such borrowings and the party borrowing the money shall be solely responsible for meeting all payments of interest and principal in connection with the additional money.

5. LEGAL EFFECT

5.1 That subject to the provisions of this agreement the parties agree that this agreement shall be in full and final settlement of all claims which each of them may have against the other under any statute whatsoever or at common law or at equity.

5.2 The operation of this agreement shall not be affected by the bankruptcy of either party, or the taking of assets or property in execution by creditors, or by the separation of the parties (as defined in the following sub-clause of this agreement) or their subsequent reconciliation or reconciliations, or by the marriage of the parties.

5.3 In this agreement the [term] "separation" shall include any occasion upon which the parties cease to live together in a [de facto] relationship as defined by the Act and whether or not by virtue of any oral or written agreement between them or pursuant to a separation order made by any Court or competent jurisdiction.

6. ACKNOWLEDGMENT

6.1 This agreement shall bind the executors, administrators and personal representatives of both Caroline and David given the parties acknowledge that they have had independent legal advice before signing this agreement and the effects and implications of this agreement have been explained to them by their respective solicitors. They further acknowledge that they have received a draft of this agreement for consideration and approval prior to executing it.

6.2 Any notice to be given pursuant to the terms of the agreement shall be in writing addressed to the parties to whom it is to be given and may be served personally or sent by prepaid registered post to the last known address of such party or such other address as that party may from time to time notify to the other and shall be deemed to be served on the day personally served or on the second day after it is posted.

6.3 No failure on the part of either party to enforce at any time any of the provisions of this agreement shall be construed as a waiver of any of his/her rights under this agreement nor shall any such failure affect the validity of any provisions of this agreement or otherwise prejudice that party in any way whatsoever.

6.4 The parties acknowledge that the provisions of section 8, 9, 11, 13 and 15 of the Act have been explained to them, so they are aware in general terms of their likely respective rights and entitlements in respect of the property and the mortgage should they subsequently marry each other.

6.5 The parties agree that this agreement will constitute an agreement under section 21 of the Act.

6.6 Each party further acknowledges that he or she is under no legal disability and that each of them is of sound mind and of legal capacity, neither of them is under duress or undue influence and each voluntarily executes this agreement of his or her own free act and will.

6.7 Each party shall pay his or her own legal costs and disbursements in relation to this agreement.

7. RESOLVING DISPUTES

Should any dispute arise between the parties touching any matter under this agreement (for the purposes of the clause "dispute" shall include any controversy or claim arising out of or related to the agreement or any breach thereof, including the circumstances in which it was formed, and any question regarding its existence, validity or termination)

7.1 Such dispute shall be defined by written notice by the party raising it to the other party and shall forthwith be discussed in good faith (on a "without prejudice" basis) by the parties in an attempt to use their best endeavours to resolve their differences amicably.

7.2 If the discussions referred to in clause 7.1 fail to resolve the relevant dispute the parties to this agreement shall by further written notice endeavour in good faith to resolve the dispute expeditiously through means other than litigation or arbitration, using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.

7.3 If the parties do not agree within 7 days of receipt the notice (or such further period as agreed in writing by them) as to:

- 7.3.1 The dispute resolution technique and procedures to be adopted;
- 7.3.2 The time table for all steps in those procedures;
- 7.3.3 The selection and compensation of the independent person required for such techniques;

the parties must submit the dispute for mediation by a single mediator to be agreed by the parties, and, failing agreement, as appointed by the then President of the Auckland District Law Society. In the event of any such submission to mediation:

- 7.3.4 The mediator will be deemed to be not acting as an expert or an arbitrator;
- 7.3.5 The mediator will determine the procedure and time table for the mediation;
- 7.3.6 The cost of the mediation will be shared equally between the parties.

7.4 No party to the dispute may commence proceedings in any Court unless the dispute has been referred to a dispute resolution person or organisation in accordance with this clause and the dispute has not been resolved.

SCHEDULE A

306 Cowan Road, Hūnua

Chattels and household effects situate at or in the properties at 306 Cowan Road, Hūnua and at 99 Moumoukai Road, Hūnua respectively.

All jewellery and other personal possessions of whatsoever nature and kind whether or not in the possession of or owned by Caroline in her own name absolutely.

SCHEDULE B

All personal possessions of whatsoever nature and kind as are in the possession of or owned by David in his own name absolutely.

SCHEDULE C

The property situate at and known as 99 Moumoukai Road, Hūnua together with all plant and equipment used in relationship to the property and all stock depastured thereon.