

BETWEEN **NIGEL DAVID RIMMER and NICOLA RIMMER**

Appellants

AND **CAROLYN MARY WILTON**

Respondent

**OUTLINE OF APPELLANTS' ORAL ARGUMENT
17 MARCH 2026**

Pursuant to the requirements under the Supreme Court Submissions Practice Note and having made appropriate inquiries, counsel hereby certify that, to the best of their knowledge, this outline of oral submissions for the appellants does not contain any suppressed information and is therefore suitable for publication.

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Introduction

Question: "whether the Court of Appeal was correct to dismiss the appeal". If Option B is elected, may the surviving partner receive their entitlements under a will or on an intestacy, while also relying on a s 21 agreement?

Answer: Yes, Court of Appeal was correct to hold that a surviving partner who wants to rely on a s 21 agreement should usually choose Option B. Otherwise, no. If Option B is selected, whether the survivor can also receive their entitlements under a will or on an intestacy, while relying on the agreement, will depend on the correct construction of the agreement, and the intentions of the parties as shown by their wills (if any), plus the ownership structures used by the parties. Here, Ms Wilton (and Mr Rimmer) contracted out of intestacy entitlements.

Structure of oral submissions:

- context, core principles, cohesion and clarity – Ms Bruton KC; and
- construction of the agreement (plus subsidiary issues) – Mr Walker.

Context – confusion and concern

- Law Commission 2017 [App Tab 72] at [34.45] – to rely on contract, must choose Option A. Court of Appeal disagrees at [39(a)].
- Concerned practitioners – how can double dipping occur as it did here, when policy behind s 61 is a choice between PRA and succession entitlements? [5.034]; Westlaw commentary [5.039].
- Prof. Peart 2017 [App Tab 85] – uncertainty and unpredictability – succession arrangements added into statute otherwise dealing with classification of property, and division of relationship property.
- In practice, confusion, but does not matter if congruent s 21 agreement and wills in place. Option A / B outcomes the same. But where drafting poor or on intestacy, we see these problems.
- Important for parties and practitioners for Supreme Court to clarify / state principles.

Nine core principles – confluence table; six regimes

1. Surviving partner can receive both relationship property and succession entitlement *by choice*. The parties' choice is ascertained from ownership structures, terms of any agreement and any will (see *columns one, three and four on page three*). Survivor cannot receive both sets of entitlements by default (see *columns two and five*).
2. Where there is no contracting out agreement, s 61 provides a stark choice for survivor between: Option A – application under PRA for division of relationship property (ie default division, noting ss 76 and 77 adjustments); or Option B – not to apply under PRA for division, and receive any will or any intestacy entitlements (succession entitlements).
3. Parliament allowed, indeed, encouraged, partners to reach their own agreements about the status, ownership and division of their property, and to thereby contract out of the PRA default provisions.

Nine core principles – confluence table; six regimes

4. Where there is a contracting out agreement, survivor may still make a s 61 choice, otherwise deemed to have chosen Option B (s 68).
5. Survivor would only choose Option A if they wanted to apply to set aside agreement (s 21J), or claim it was void under s 21F, and apply for default division of relationship property. Or if agreement covered some property and they wanted other property divided under PRA.
6. Where there is a contracting out agreement the extent of the survivor's Option B succession entitlements (by will or on intestacy) will depend on the correct construction of the agreement, ownership arrangements and the terms of the deceased's will, if any. Contractual, testamentary and ownership autonomy have primacy.
7. It is possible to contract out of default entitlements on intestacy. No principled distinction between s 21 and s 21A agreements. A will is a one-sided "opt-out" of default entitlements – parties must be able to have a two-sided "opt-out" contract. See: *Warrender* [App Tab 38]; *O'Donoghue* [App Tab 34]; *Gurly* [App Tab 49]; *Penny v Milligan* [App Tab 40]; *Re Rist* [App Tab 46]; and *Stern* [App Tab 48].

Cohesion and clarity

8. Contractual primacy / choice approach makes sense of all six statutory regimes, and respects contract, legal ownership and testamentary autonomy. There is no prohibition on double dipping where that is intended by the parties.
9. Clearest outcomes, most likely to be respected on death, are those where clients, with legal assistance, have exercised autonomy over the three voluntary regimes and prepared a "package deal" – legal ownership, a PRA contract, and wills, which are all congruent. See: *Chambers* [App Tab 23] and *Thurston* [App Tab 37].

Construction of the agreement

- Contractual interpretation: objective assessment in light of purpose of agreement. See *Bathurst* [App Tab 22] at [43]; *M v H* [App Tab 31] at [25]; and *Harrison* [App Tab 84] at [22].
- No procedural impediment to Court determining issue: decided by Court of Appeal; further evidence not necessary / even available.
- "Comprehensive intent"; full and final settlement clause: *Warrender* [App Tab 38] at [40] and *O'Donoghue* [App Tab 34] at [45].
- Respondent in effect urges a redraft: "... full and final settlement of all claims which each of them may have against the other under any statute whatsoever (except the Administration Act), or at common law or at equity".
- This case / estate involves real people. Mr Rimmer died in 2016. Ms Wilton should not have "boxed on" given terms of the agreement.
- Subsidiary construction arguments. Outcome: half share of Hunua Property proceeds belongs absolutely to Mr Rimmer's estate.

Rimmer v Wilton – big picture – confluence of six regimes when the first domestic partner dies

VOLUNTARY	STATUTORY DEFAULT	VOLUNTARY	VOLUNTARY	STATUTORY DEFAULT	STATUTORY FORMS
LEGAL OWNERSHIP	PRA 1976	PRA CONTRACT	SUCCESSION BY WILL	DEFAULT SUCCESSION	PR FORM REGS AND HIGH COURT RULES
<ul style="list-style-type: none"> Separate ownership Tenancy in common Joint tenancy Trust / company ownership <p>Whether ownership arrangements will stand will depend on PRA default division, and terms of any PRA contract. If Option B is chosen surviving partner inherit jointly owned property by survivorship (subject to administrator (usually for children of deceased's prior relationship) being granted leave to apply for division under s 88(2): <i>Public Trust v Whyman</i> [2005] 2 NZLR 696).</p> <p>Example will clause to protect jointly owned property for survivor and for s 76 of PRA, "I intend my partner to receive the provision in this my will, in addition to the jointly owned property she inherits from me by survivorship, and in addition to her entitlements under the Property (Relationships) Act 1976, or any agreement between us under Part 6 of that Act."</p>	<p>Default rules for:</p> <ol style="list-style-type: none"> Determination of status of personally owned property – is it relationship property (ss 8–10). Division of RP – equal sharing of relationship property on separation (s 11). Adjustment to equal sharing of RP – equal sharing of RP repugnant to justice (s 13); economic disparity (s 15). Ownership / Vesting – s 33. Option B on Death – s 68. <p>Death, surviving partner has choice of option under s 61:</p> <p><i>Option A is to elect to make an application under this Act for a division of the relationship property.</i></p> <p><i>Option B is as follows:</i></p> <ol style="list-style-type: none"> <i>to elect not to make an application under this Act for a division of the relationship property; and</i> <i>if the surviving spouse or partner is a beneficiary under the will of the deceased spouse or partner, to receive that property; and</i> <i>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.</i> <p>Option A – gifts in will revoked, unless will expresses contrary intention / Court allows (ss 76, 77).</p>	<p>Partners can contract out of PRA default rules which otherwise determine status, ownership and division of their property at the start (s 21) or the end of relationship (s 21A). No distinction between the two.</p> <p>Parliament has encouraged partners to reach their own agreements. In 2002 raised bar to set aside: <i>Harrison</i> [2005] 2 NZLR 249 (CA) (App Tab 27).</p> <p>Subject to statutory safeguards in PRA (s 21F) and setting aside for serious injustice (s 21J).</p> <p>Partners cannot contract out of PRA completely, nor the s 61 choice of option – an election must be made (or deemed to have been made) so the administrator knows when and how to distribute the estate (ss 62, 63, 68 and 71).</p> <p>Section 87, surviving spouse may challenge contract for serious injustice under s 21J. (Then they must choose Option A – set aside under s 21J, and division under Act.)</p> <p>Usual rules of construction plus PRA statutory overlay (in particular the purpose of s 21 agreements) apply to contract interpretation: <i>Harrison v Harrison</i> [2013] NZHC 2181, (2013) 3 NZTR 23-012 (App Tab 84) at [22] and [23]. Court must have regard to fact parties wished to achieve certainty as to status, ownership and division, of property by entering agreement (s 21J(4)(e)).</p> <p>Under Option B, the survivor will receive under the s 21 agreement and possibly also under succession if clear intention this was intended. Interpretation best fits with s 61 (conditional language of "if"), statutory scheme (ss 21J(4)(e) and 76).</p>	<p>Principle of testamentary freedom. Testators can dispose of their property on their death as they choose. Subject to compliance with statutory safeguards – Wills Act 2007 (plus law on capacity, undue influence, knowledge and approval).</p> <p>Exceptions:</p> <ul style="list-style-type: none"> Restrictions on bequest of Māori land under TTWMA 1993; and / or Surviving partner choosing Option A. <p>To preserve testamentary freedom, parties can agree about status, ownership and division by s 21 and s 21A agreements, which also apply to separation by death.</p> <p>Testamentary freedom, other than by will, can be exercised through such a contract – client has legal advice, contract is certified and witnessed – high degree of certainty that the deceased has considered, on advice, the extent to which the surviving partner will have entitlements to the subject property when the deceased dies including jointly owned property. (<i>Thurston</i> (App Tab 37); <i>Chambers</i> (App Tab 23)).</p> <p>*Family Protection Act 1955 "top up" claims available to survivor, and TPA (PRA, s 57). The ability to contract out of top ups does not need to be determined on this appeal.</p>	<p>If there is no will, default Administration Act regime applies unless statutory successor has contracted out of that "entitlement", or it has been trumped by a promise to / contract with someone else.</p> <p>Section 77 Administration Act 1969:</p> <p><i>If a person (the intestate) dies intestate as to any real or personal estate and leaves the other person or people referred to in column 1 of the following table, that estate must be distributed [according to the statutory trusts].</i></p> <p>"Must" must be read as subject to any agreement or promise which precludes statutory trust beneficiary receiving all or any part of the default entitlement.</p> <p>There is no law prohibiting contracting out of s 77 and policy reasons support it: <i>Warrender v Warrender</i> (App Tab 38) at [18]–[20]; and <i>O'Donoghue v Comia</i> (App Tab 34) at [23]–[33].</p> <p>No principled reason for distinction between s 21 / s 21A agreements. (<i>Gurly v Gurly</i> (App Tab 49); <i>Penny v Milligan</i> (App Tab 40); <i>Re Rist</i> (App Tab 46); and <i>Stern v Sheps</i> (App Tab 48)).</p> <p>Section 81 right of successor on intestacy to disclaim does not apply if the surviving partner does not have any entitlement on intestacy in the first place because they have contracted out of it or chosen Option A (App subs at [4.20] and NZLS subs at [6.6] and fn 14).</p> <p>*Subject to any FPA top up available.</p>	<p>Property (Relationships) Forms Regs 2001. Sch 2, Notice of choice of option (App Tab 10).</p> <p><i>Under section 61 of the Property (Relationships) Act 1976, I choose—</i></p> <p><i>*option A—to elect to make an application under that Act for a division of the relationship property.</i></p> <p>Or *option B—</p> <ul style="list-style-type: none"> <i>to elect not to make an application under that Act for a division of the relationship property; and to receive—</i> any property to which I am entitled as a beneficiary under the will of [spouse, civil union partner, or de facto partner]; and any beneficial interest to which I am entitled on his or her intestacy or partial intestacy. <p>High Court Rules 2016 (App Tab 5). Rule 27.35 order of priority for grant in case of intestacy. Applicants must have a "beneficial interest" (r 27.35(4)).</p> <p>Form PR3 – to obtain the grant, surviving de facto partner must be "entitled to succeed on the intestacy".</p>