



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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No. 9322

KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 1517.

25 Julie 1984

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 88 van 1984: Wet op Huweliksgoedere, 1984.

No. 1517.

25 July 1984

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 88 of 1984: Matrimonial Property Act, 1984.

Wet No. 88, 1984

WET OP HUWELIKSGOEDERE, 1984

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Om die huweliksgoederereg te wysig en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 3 Julie 1984.)*

DAAR WORD BEPAAL deur die Staatspresident en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing.

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

- (i) "afsonderlike goed" goed wat nie deel van 'n gemeenskaplike boedel uitmaak nie; (vii) 5
- (ii) "bankinstelling" 'n bankinstelling soos omskryf in artikel 1 van die Bankwet, 1965 (Wet No. 23 van 1965); (i)
- (iii) "bouvereniging" 'n bouvereniging soos omskryf in artikel 1 van die Bouverenigingswet, 1965 (Wet No. 24 van 1965); (ii) 10
- (iv) "finansiële instelling" 'n finansiële instelling soos omskryf in artikel 1 van die Wet op Finansiële Instellings (Belegging van Fondse), 1984 (Wet No. 39 van 1984); (iv)
- (v) "gemeenskaplike boedel" die gemeenskaplike boedel 15 van 'n man en 'n vrou wat in gemeenskap van goed getroud is; (v)
- (vi) "genoteerde effekte" genoteerde effekte soos omskryf in artikel 1 van die Wet op Beheer van Effektebeurse, 1947 (Wet No. 7 van 1947); (vi) 20
- (vii) "hof" 'n provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika of 'n egskeidingshof ingestel kragtens artikel 10 van die Swart Administrasiewet, 1927, Wysigingswet, 1929 (Wet No. 9 van 1929), en ook, by die toepassing van artikel 16, 'n regter in kamers, en, by die toepassing van artikel 16 (1), 'n landdroshof wat met betrekking tot die betrokke aangeleentheid jurisdiksie het. (iii) 25

HOOFSTUK I**AANWASBEDELING**

30

Huwelike
onderworpe aan
aanwasbedeling.

2. Elke huwelik buite gemeenskap van goed ingevolge huweliksvoorwaardes waardeur gemeenskap van goed en gemeenskap van wins en verlies uitgesluit word, wat na die inwerkingtreding van hierdie Wet gesluit word, is aan die aanwasbedeling uiteengesit in hierdie Hoofstuk onderworpe, behalwe vir sover dié bedeling uitdruklik deur die huweliksvoorwaardes uitgesluit word. 35

Aanwasbedeling.

3. (1) By die ontbinding van 'n huwelik onderworpe aan die aanwasbedeling deur egskeiding of deur die dood van een van of albei die gades, verkry die gade wie se boedel geen aanwas toon nie of 'n kleiner aanwas toon as die boedel van die ander gade, 40

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GENERAL EXPLANATORY NOTE:

- I** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the matrimonial property law and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 3 July 1984.)

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

1. In this Act, unless the context indicates otherwise—

Definitions.

- 5 (i) "banking institution" means a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965); (ii)
- (ii) "building society" means a building society as defined in section 1 of the Building Societies Act, 1965 (Act No. 24 of 1965); (iii)
- 10 (iii) "court" means a provincial or local division of the Supreme Court of South Africa or a divorce court instituted under section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929), and includes, for the purposes of section 16, a judge in chambers, and, for the purposes of section 16 (1), a magistrate's court which has jurisdiction in the matter concerned; (vii)
- 15 (iv) "financial institution" means a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984); (iv)
- 20 (v) "joint estate" means the joint estate of a husband and a wife married in community of property; (v)
- (vi) "listed securities" means listed securities as defined in section 1 of the Stock Exchanges Control Act, 1947 (Act No. 7 of 1947); (vi)
- 25 (vii) "separate property" means property which does not form part of a joint estate. (i)

CHAPTER I

30 ACCRUAL SYSTEM

2. Every marriage out of community of property in terms of an antenuptial contract by which community of property and community of profit and loss are excluded, which is entered into after the commencement of this Act, is subject to the accrual system specified in this Chapter, except in so far as that system is expressly excluded by the antenuptial contract.

Marriages subject to accrual system.

3. (1) At the dissolution of a marriage subject to the accrual system, by divorce or by the death of one or both of the spouses, the spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse, or his estate if he is

Accrual system.

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of sy boedel indien hy oorlede is, 'n vordering teen die ander gade of sy boedel vir 'n bedrag gelyk aan die helfte van die verskil tussen die aanwas van die gades se onderskeie boedels.

(2) Behoudens die bepalinge van artikel 8 (1) ontstaan 'n vordering ingevolge subartikel (1) by die ontbinding van die huwelik, en is die reg van 'n gade om ingevolge hierdie Wet in die aanwas van die ander gade se boedel te deel nie gedurende die bestaan van die huwelik sedeerbaar of vir beslaglegging vatbaar nie, en maak dit nie deel van die insolvente boedel van 'n gade uit nie.

Aanwas van boedel.

4. (1) (a) Die aanwas van 'n gade se boedel is die bedrag waarmee die netto waarde van sy boedel by die ontbinding van sy huwelik die netto waarde van sy boedel by die aanvang van daardie huwelik oorskry.
- (b) By die bepaling van die aanwas van 'n gade se boedel—
- (i) word enige bedrag wat by wyse van vergoeding, uitgesonderd vergoeding vir vermoënskade, by die boedel aangewas het buite rekening gelaat;
 - (ii) word 'n bate wat ingevolge die huweliksvoorwaardes van die gades van die aanwasbedeling uitgesluit is, asook enige ander bate wat hy uit hoofde van sy besit of vroeëre besit van eersgenoemde bate verkry het, nie as deel van dié boedel by die aanvang of die ontbinding van sy huwelik in aanmerking geneem nie;
 - (iii) word die netto waarde van dié boedel by die aanvang van sy huwelik bereken met inagneming van enige verskil wat daar in die waarde van geld mag bestaan by die aanvang en die ontbinding van sy huwelik, en vir dié doel geld die beswaarde gemiddelde van die verbruikersprysindeks soos van tyd tot tyd in die *Staatskoerant* afgekondig, as *prima facie*-bewys van enige verandering in die waarde van geld.

(2) Die aanwas van 'n oorlede gade se boedel word bepaal voordat daar aan 'n testamentêre beskikking, 'n skenking *mortis causa* of erfopvolging ingevolge die intestate erfreg uit daardie boedel gevolg gegee word.

Erflatings, legate en skenkings uitgesluit van aanwas.

5. (1) 'n Erflating, legaat of skenking wat 'n gade gedurende die bestaan van sy huwelik toeval, asook enige ander bate wat hy uit hoofde van sy besit of vroeëre besit van daardie erflating, legaat of skenking verkry het, maak nie deel van die aanwas van sy boedel uit nie, behalwe vir sover die gades in hulle huweliksvoorwaardes anders ooreenkom of vir sover die erflater of skenker anders bepaal.

(2) By die bepaling van die aanwas van 'n gade se boedel word 'n skenking tussen gades, uitgesonderd 'n skenking *mortis causa*, nóg as deel van die skenker se boedel nóg as deel van die begiftigde se boedel in aanmerking geneem.

Bewys van aanvangswaarde van boedel.

6. (1) Waar 'n party by 'n voorgenome huwelik nie vir die doel van bewys van die netto waarde van sy boedel by die aanvang van sy huwelik daardie waarde in die betrokke huweliksvoorwaardes verklaar nie, kan hy vir dié doel daardie waarde voor die sluiting van die huwelik of binne ses maande daarna in 'n opgawe verklaar, wat deur die ander party onderteken moet word, en die opgawe deur 'n notaris laat attesteer en saam met die afskrif van die huweliksvoorwaardes van die partye in die protokol van die notaris voor wie die huweliksvoorwaardes verly is, laat bewaar.

(2) 'n Notaris wat so 'n opgawe attesteer, moet aan die partye 'n gesertifiseerde afskrif daarvan verstrek waarop hy moet sertifiseer dat die oorspronklike saam met die afskrif van die partye se huweliksvoorwaardes in sy protokol bewaar word of, indien hy nie die notaris is voor wie die huweliksvoorwaardes verly is nie, moet hy die oorspronklike opgawe per aangetekende pos aan die notaris stuur wat die huweliksvoorwaardes in sy protokol bewaar, of aan die bewaarder van sy protokol, na gelang van die geval, en laasgenoemde notaris of daardie bewaarder moet die oorspronklike opgawe in sy protokol bewaar tesame met die afskrif van die partye se huweliksvoorwaardes.

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deceased, acquires a claim against the other spouse or his estate for an amount equal to half of the difference between the accrual of the respective estates of the spouses.

(2) Subject to the provisions of section 8 (1), a claim in terms of subsection (1) arises at the dissolution of the marriage and the right of a spouse to share in terms of this Act in the accrual of the estate of the other spouse is during the subsistence of the marriage not transferable or liable to attachment, and does not form part of the insolvent estate of a spouse.

10 4. (1) (a) The accrual of the estate of a spouse is the amount by which the net value of his estate at the dissolution of his marriage exceeds the net value of his estate at the commencement of that marriage. Accrual of estate.

(b) In the determination of the accrual of the estate of a spouse—

15 (i) any amount which accrued to that estate by way of damages, other than damages for patrimonial loss, is left out of account;

20 (ii) an asset which has been excluded from the accrual system in terms of the antenuptial contract of the spouses, as well as any other asset which he acquired by virtue of his possession or former possession of the first-mentioned asset, is not taken into account as part of that estate at the commencement or the dissolution of his marriage;

25 (iii) the net value of that estate at the commencement of his marriage is calculated with due allowance for any difference which may exist in the value of money at the commencement and dissolution of his marriage, and for that purpose the weighted average of the consumer price index as published from time to time in the *Gazette* serves as *prima facie* proof of any change in the value of money.

30 (2) The accrual of the estate of a deceased spouse is determined before effect is given to any testamentary disposition, donation *mortis causa* or succession out of that estate in terms of the law of intestate succession.

5. (1) An inheritance, a legacy or a donation which accrues to a spouse during the subsistence of his marriage, as well as any other asset which he acquired by virtue of his possession or former possession of such inheritance, legacy or donation, does not form part of the accrual of his estate, except in so far as the spouses may agree otherwise in their antenuptial contract or in so far as the testator or donor may stipulate otherwise. Inheritances, legacies and donations excluded from accrual.

45 (2) In the determination of the accrual of the estate of a spouse a donation between spouses, other than a donation *mortis causa*, is not taken into account either as part of the estate of the donor or as part of the estate of the donee.

6. (1) Where a party to an intended marriage does not for the purpose of proof of the net value of his estate at the commencement of his marriage declare that value in the antenuptial contract concerned, he may for such purpose declare that value before the marriage is entered into or within six months thereafter in a statement, which shall be signed by the other party, and cause the statement to be attested by a notary and filed with the copy of the antenuptial contract of the parties in the protocol of the notary before whom the antenuptial contract was executed. Proof of commencement value of estate.

55 (2) A notary attesting such a statement shall furnish the parties with a certified copy thereof on which he shall certify that the original is kept in his protocol together with the copy of the antenuptial contract of the parties or, if he is not the notary before whom the antenuptial contract was executed, he shall send the original statement by registered post to the notary in whose protocol the antenuptial contract is kept, or to the custodian of his protocol, as the case may be, and the last-mentioned notary or that custodian shall keep the original statement together with the copy of the antenuptial contract of the parties in his protocol.

(3) Huweliksvoorwaardes bedoel in subartikel (1) of 'n gesertifiseerde afskrif daarvan, of 'n opgawe wat ingevolge subartikel (1) onderteken en geattesteer is of 'n gesertifiseerde afskrif daarvan beoog in subartikel (2), geld as *prima facie*-bewys van die netto waarde van die boedel van die betrokke gade by die aanvang van sy huwelik. 5

(4) Die netto waarde van 'n gade se boedel by die aanvang van sy huwelik word geag nul te wees indien—

- (a) daardie gade se laste sy bates by die aanvang oorskry;
- (b) daardie waarde nie in sy huweliksvoorwaardes of in 'n opgawe ingevolge subartikel (1) verklaar is nie en die teendeel nie bewys word nie.

Verpligting om besonderhede van waarde van boedel te verstrek.

7. Wanneer dit nodig is om die aanwas van 'n gade of 'n oorlede gade se boedel te bepaal, moet daardie gade of die eksekuteur van die oorlede gade se boedel, na gelang van die geval, binne 'n redelike tyd op aanvraag deur die ander gade of die eksekuteur van die boedel van die ander gade, na gelang van die geval, volledige besonderhede van die waarde van daardie boedel verstrek. 15

Bevoegdheid van hof om verdeling van aanwas te gelas.

8. (1) 'n Hof kan op aansoek van 'n gade wie se huwelik aan die aanwasbedeling onderworpe is en wat die hof oortuig dat sy reg om by die ontbinding van die huwelik in die aanwas van die ander gade se boedel te deel deur die optrede of voorgenome optrede van die ander gade ernstig benadeel word of waarskynlik ernstig benadeel sal word, en dat ander persone nie daardeur benadeel sal word nie, die onmiddellike verdeling van die betrokke aanwas ooreenkomstig die bepalinge van hierdie Hoofstuk of op die ander grondslag wat die hof billik ag, gelas. 25

(2) 'n Hof wat 'n lasgewing kragtens subartikel (1) uitreik, kan beveel dat die aanwasbedeling wat op die huwelik van toepassing is, vervang word deur 'n huweliksgoederebedeling ingevolge waarvan aanwasdeling asook gemeenskap van goed en gemeenskap van wins en verlies uitgesluit word. 30

(3) Wanneer 'n bevel kragtens subartikel (2) gegee word, moet die griffier 'n afskrif daarvan aan die betrokke registrateur van aktes stuur, wat 'n paslike verwysing na die nuwe huweliksgoederebedeling op die registrasieduplikaat van die betrokke huweliksvoorwaardes en op elke afskrif daarvan wat aan hom vir endossering aangebied word, moet laat aanbring. 35

(4) 'n Registrateur van aktes wat ingevolge subartikel (3) kennis van 'n nuwe huweliksgoederebedeling kry, moet alle ander registrateurs van aktes dienoooreenkomstig in kennis stel en elk van hulle van 'n afskrif van die hofbevel voorsien, en elke registrateur van aktes wat aldus in kennis gestel word, moet 'n paslike verwysing na die nuwe huweliksgoederebedeling op die afskrif, as daar is, van die betrokke huweliksvoorwaardes wat in sy kantoor geliasseer is en op elke afskrif daarvan wat aan hom vir endossering aangebied word, laat aanbring. 40 45

Verbeuring van reg op aanwasdeling.

9. Die reg om ingevolge hierdie Hoofstuk in die aanwas van 'n gade se boedel te deel, is 'n vermoënsregtelike voordeel wat, by eg skeiding, in die geheel of gedeeltelik verbeurd verklaar kan word. 50

Uitstel van voldoening aan aanwasvordering.

10. 'n Hof kan op aansoek van iemand teen wie 'n aanwasvordering afdwingbaar is, gelas dat voldoening aan die vordering uitgestel word op die voorwaardes, met inbegrip van voorwaardes betreffende die stel van sekerheid, die betaling van rente, die betaling van paalemente, en die lewering of oordrag van bepaalde bates, wat die hof billik ag. 55

HOOFTUK II

AFSKAFFING VAN MARITALE MAG

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Afskaffing van maritale mag.

11. Behoudens die bepalinge van artikel 25 word die maritale mag wat 'n man kragtens die gemene reg oor die persoon en goed van sy vrou het, hierby afgeskaf ten opsigte van huiwelike wat na die inwerkingtreding van hierdie Wet gesluit word.

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(3) An antenuptial contract contemplated in subsection (1) or a certified copy thereof, or a statement signed and attested in terms of subsection (1) or a certified copy thereof contemplated in subsection (2), serves as *prima facie* proof of the net value of the estate of the spouse concerned at the commencement of his marriage.

(4) The net value of the estate of a spouse at the commencement of his marriage is deemed to be nil if—

- (a) the liabilities of that spouse exceed his assets at such commencement;
- (b) that value was not declared in his antenuptial contract or in a statement in terms of subsection (1) and the contrary is not proved.

7. When it is necessary to determine the accrual of the estate of a spouse or a deceased spouse, that spouse or the executor of the estate of the deceased spouse, as the case may be, shall within a reasonable time at the request of the other spouse or the executor of the estate of the other spouse, as the case may be, furnish full particulars of the value of that estate.

Obligation to furnish particulars of value of estate.

8. (1) A court may on the application of a spouse whose marriage is subject to the accrual system and who satisfies the court that his right to share in the accrual of the estate of the other spouse at the dissolution of the marriage is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced thereby, order the immediate division of the accrual concerned in accordance with the provisions of this Chapter or on such other basis as the court may deem just.

Power of court to order division of accrual.

(2) A court making an order under subsection (1) may order that the accrual system applicable to the marriage be replaced by a matrimonial property system in terms of which accrual sharing as well as community of property and community of profit and loss are excluded.

(3) When an order is made under subsection (2), the registrar shall send a copy thereof to the registrar of deeds concerned, who shall cause an appropriate reference to the new matrimonial property system to be made on the registry duplicate of the antenuptial contract concerned and on every copy thereof tendered to him for endorsement.

(4) A registrar of deeds who receives notice of a new matrimonial property system in terms of subsection (3), shall notify all other registrars of deeds accordingly and furnish each of them with a copy of the court order, and every registrar of deeds so notified shall cause an appropriate reference to the new matrimonial property system to be endorsed on the copy, if any, of the antenuptial contract concerned filed in his registry and on every copy thereof tendered to him for endorsement.

9. The right to share in the accrual of the estate of a spouse in terms of this Chapter is a patrimonial benefit which may on divorce be declared forfeit, either wholly or in part.

Forfeiture of right to accrual sharing.

10. A court may on the application of a person against whom an accrual claim lies, order that satisfaction of the claim be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified assets, as the court may deem just.

Deferment of satisfaction of accrual claim.

CHAPTER II

ABOLITION OF MARITAL POWER

11. Subject to the provisions of section 25, the marital power which a husband has under the common law over the person and property of his wife is hereby abolished in respect of marriages entered into after the commencement of this Act.

Abolition of marital power.

Wet No. 88, 1984

WET OP HUWELIKSGOEDERE, 1984

Uitwerking van
afskaffing van
maritale mag.

12. Behoudens die bepalings van hierdie Wet is die uitwerking van die afskaffing van die maritale mag om weg te doen met die beperkinge wat die maritale mag op die handelings- en verskyningsbevoegdheid van 'n vrou plaas.

Voorbehoude.

13. Die bepalings van hierdie Hoofstuk raak nie die reg betreffende die man se posisie as hoof van die gesin of die reg betreffende domisilie en voogdy nie.

HOOFSTUK III

HUWELIKE IN GEMEENSAP VAN GOED

Gelyke
bevoegdhede van
gades getroud in
gemeenskap.

14. Behoudens die bepalings van hierdie Hoofstuk het 'n vrou in 'n huwelik in gemeenskap van goed dieselfde bevoegdhede met betrekking tot die beskikking oor die bates van die gemeenskaplike boedel, die aangaan van skulde wat van die gemeenskaplike boedel verhaalbaar is, en die bestuur van die gemeenskaplike boedel, as dié wat 'n man in so 'n huwelik onmiddellik voor die inwerkingtreding van hierdie Wet gehad het.

Bevoegdhede van
gades.

15. (1) Behoudens die bepalings van subartikels (2), (3) en (7) kan 'n gade in 'n huwelik in gemeenskap van goed sonder die toestemming van die ander gade enige regshandeling met betrekking tot die gemeenskaplike boedel verrig.

(2) So 'n gade mag nie sonder die skriftelike toestemming van die ander gade—

- (a)** onroerende goed wat deel van die gemeenskaplike boedel uitmaak, vervreem of met verband of serwituut beswaar of enige ander saaklike reg daaroor verleen nie;
- (b)** enige kontrak ter vervreemding of beswaring met verband of serwituut of ter verlening van enige ander saaklike reg oor onroerende goed wat deel van die gemeenskaplike boedel uitmaak, sluit nie;
- (c)** enige aandele, effekte, obligasies, skuldbriewe, verskeringspolisse, verbande, vaste deposito's of enige dergelike bates, of 'n belegging deur of ten behoeve van die ander gade in 'n finansiële instelling, wat deel van die gemeenskaplike boedel uitmaak, vervreem, seeder of verpand nie;
- (d)** enige juwele, munte, seëls, skilderye of enige ander bates wat deel van die gemeenskaplike boedel uitmaak en hoofsaaklik as beleggings gehou word, vervreem of verpand nie;
- (e)** geld wat op naam van die ander gade in enige rekening by 'n bankinstelling, 'n bouvereniging of die Posspaarbank van die Republiek van Suid-Afrika staan, onttrek nie;
- (f)** as kredietopnemer 'n kredietooreenkoms soos omskryf in die Wet op Kredietooreenkomste, 1980 (Wet No. 75 van 1980), en waarop die bepalings van daardie Wet in gevolge artikel 2 daarvan van toepassing is, sluit nie;
- (g)** as koper 'n kontrak soos omskryf in die Wet op Vreemding van Grond, 1981 (Wet No. 68 van 1981), en waarop die bepalings van daardie Wet van toepassing is, sluit nie;
- (h)** hom as borg verbind nie.

(3) 'n Gade mag nie sonder die toestemming van die ander gade—

- (a)** meubels of ander losgoed van die gemeenskaplike huis, houding wat deel van die gemeenskaplike boedel uitmaak, vervreem, verpand of andersins beswaar nie;
- (b)** geld wat aan dié ander gade of die gemeenskaplike boedel verskuldig is of toeval by wyse van—
 - (i)** besoldiging, verdienste, bonus, toelae, tantième, pensioen of gratifikasie, uit hoofde van sy beroep, bedryf, besigheid, of dienste deur hom gelewer;

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12. Subject to the provisions of this Act, the effect of the abolition of the marital power is to do away with the restrictions which the marital power places on the capacity of a wife to contract and to litigate.

Effect of abolition of marital power.

13. The provisions of this Chapter do not affect the law relating to the position of the husband as head of the family or the law relating to domicile and guardianship.

Savings.

CHAPTER III

MARRIAGES IN COMMUNITY OF PROPERTY

14. Subject to the provisions of this Chapter, a wife in a marriage in community of property has the same powers with regard to the disposal of the assets of the joint estate, the contracting of debts which lie against the joint estate, and the management of the joint estate as those which a husband in such a marriage had immediately before the commencement of this Act.

Equal powers of spouses married in community.

15. (1) Subject to the provisions of subsections (2), (3) and (7), a spouse in a marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.

Powers of spouses.

(2) Such a spouse shall not without the written consent of the other spouse—

- (a) alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate;
- (b) enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;
- (c) alienate, cede or pledge any shares, stock, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or any similar assets, or any investment by or on behalf of the other spouse in a financial institution, forming part of the joint estate;
- (d) alienate or pledge any jewellery, coins, stamps, paintings or any other assets forming part of the joint estate and held mainly as investments;
- (e) withdraw money held in the name of the other spouse in any account in a banking institution, a building society or the Post Office Savings Bank of the Republic of South Africa;
- (f) as a credit receiver enter into a credit agreement as defined in the Credit Agreements Act, 1980 (Act No. 75 of 1980), and to which the provisions of that Act apply in terms of section 2 thereof;
- (g) as a purchaser enter into a contract as defined in the Alienation of Land Act, 1981 (Act No. 68 of 1981), and to which the provisions of that Act apply;
- (h) bind himself as surety.

(3) A spouse shall not without the consent of the other spouse—

- (a) alienate, pledge or otherwise burden any furniture or other effects of the common household forming part of the joint estate;
- (b) receive any money due or accruing to that other spouse or the joint estate by way of—
 - (i) remuneration, earnings, bonus, allowance, royalty, pension or gratuity, by virtue of his profession, trade, business, or services rendered by him;

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- (ii) skadevergoeding weens verlies van inkomste beoog in subparagraaf (i);
- (iii) erflating, legaat, skenking, beurs of prys aan die ander gade nagelaat, bemaak, gemaak of toege- 5
- (iv) inkomste verkry uit die afsonderlike goed van die ander gade;
- (v) dividende of rente op of die opbrengs van aandele of beleggings op naam van die ander gade;
- (vi) die opbrengs van 'n versekeringspolis of annuïteit 10 ten gunste van die ander gade, ontvang nie;
- (c) enige bate van die gemeenskaplike boedel aan 'n ander persoon skenk of dit sonder teenwaarde vervreem nie, uitgesonderd 'n bate waarvan die skenking of ver- 15 vreemding nie die belang van die ander gade in die gemeenskaplike boedel onredelik benadeel of waarskynlik nie aldus sal benadeel nie, en wat nie in stryd met die bepalinge van subartikel (2) of paragraaf (a) van hierdie subartikel is nie. 20
- (4) Die toestemming vereis vir die doeleindes van paragraaf (b) tot (g) van subartikel (2), en subartikel (3) kan, behalwe waar dit vir die registrasie van 'n akte in 'n registrasiekantoor vereis word, ook by wyse van ratifikasie binne 'n redelike tyd na die betrokke handeling gegee word. 25
- (5) Die toestemming wat vir die verrigting van die handelinge beoog in paragrafe (a), (b), (f), (g) en (h) van subartikel (2) vereis word, moet ten opsigte van elke handeling afsonderlik gegee word en deur twee bevoegde getuies geattesteer word.
- (6) Die bepalinge van paragrafe (b), (c), (f), (g) en (h) van 30 subartikel (2) is nie van toepassing nie waar 'n handeling in daardie paragrafe beoog deur 'n gade in die gewone loop van sy beroep, bedryf of besigheid verrig word.
- (7) Ondanks die bepalinge van subartikel (2) (c) kan 'n gade sonder die toestemming van die ander gade— 35
- (a) genoteerde effekte op die effektebeurs verkoop en genoteerde effekte seeder of verpand ten einde genoteerde effekte te koop;
- (b) (i) 'n deposito wat by 'n bouvereniging of 'n bankinstelling op sy naam staan; 40
- (ii) bouverenigingsaandele wat op sy naam geregistreer is, vervreem, seeder of verpand.
- (8) By die bepaling daarvan of 'n skenking of vervreemding beoog in subartikel (3) (c) nie die ander gade se belang in die gemeenskaplike boedel onredelik benadeel nie of waarskynlik nie aldus sal benadeel nie, moet die hof die waarde van die goed wat geskenk of vervreem is, die rede vir die skenking of vervreemding, die finansiële en sosiale stand van die gades, hul lewenspeil en enige ander faktor wat na die oordeel van die hof in 50 aanmerking geneem behoort te word, in ag neem.
- (9) Wanneer 'n gade in stryd met die bepalinge van subartikel (2) of (3) van hierdie artikel, of 'n bevel kragtens artikel 16 (2), 'n transaksie met 'n persoon aangaan en—
- (a) dié persoon nie weet en redelikerwys kan weet dat die 55 transaksie in stryd met daardie bepalinge of bevel aangegaan word nie, word daar geag dat die betrokke transaksie aangegaan is met die toestemming wat ingevolge genoemde subartikel (2) of (3) vereis word, of terwyl die betrokke bevoegdheid van die gade nie op- 60 geskort was nie, na gelang van die geval;
- (b) die gade weet of redelikerwys behoort te weet dat hy waarskynlik nie die toestemming wat ingevolge genoemde subartikel (2) of (3) vereis word, sal verkry nie of dat die betrokke bevoegdheid opgeskort is, na ge- 65 lang van die geval, en die gemeenskaplike boedel as gevolg van die transaksie 'n verlies ly, moet verrekening ten gunste van die ander gade by die verdeling van die gemeenskaplike boedel geskied.

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- (ii) damages for loss of income contemplated in subparagraph (i);
- (iii) inheritance, legacy, donation, bursary or prize left, bequeathed, made or awarded to the other spouse;
- 5 (iv) income derived from the separate property of the other spouse;
- (v) dividends or interest on or the proceeds of shares or investments in the name of the other spouse;
- 10 (vi) the proceeds of any insurance policy or annuity in favour of the other spouse;
- (c) donate to another person any asset of the joint estate or alienate such an asset without value, excluding an asset of which the donation or alienation does not and probably will not unreasonably prejudice the interest of the other spouse in the joint estate, and which is not
- 15 contrary to the provisions of subsection (2) or paragraph (a) of this subsection.

(4) The consent required for the purposes of paragraphs (b) to (g) of subsection (2), and subsection (3) may, except where it is

20 required for the registration of a deed in a deeds registry, also be given by way of ratification within a reasonable time after the act concerned.

(5) The consent required for the performance of the acts contemplated in paragraphs (a), (b), (f), (g) and (h) of subsection

25 (2) shall be given separately in respect of each act and shall be attested by two competent witnesses.

(6) The provisions of paragraphs (b), (c), (f), (g) and (h) of subsection (2) do not apply where an act contemplated in those paragraphs is performed by a spouse in the ordinary course of

30 his profession, trade or business.

(7) Notwithstanding the provisions of subsection (2) (c), a spouse may without the consent of the other spouse—

- (a) sell listed securities on the stock exchange and cede or pledge listed securities in order to buy listed securities;
- 35 (b) alienate, cede or pledge—
- (i) a deposit held in his name at a building society or banking institution;
- (ii) building society shares registered in his name.

(8) In determining whether a donation or alienation contemplated in subsection (3) (c) does not or probably will not unreasonably prejudice the interest of the other spouse in the joint estate, the court shall have regard to the value of the property donated or alienated, the reason for the donation or alienation, the financial and social standing of the spouses, their standard of

40 living and any other factor which in the opinion of the court should be taken into account.

(9) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2) or (3) of this section, or an order under section 16 (2), and—

- 50 (a) that person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions or that order, it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2) or
- 55 (3), or while the power concerned of the spouse has not been suspended, as the case may be;
- (b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the said subsection (2) or (3), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the
- 60 other spouse upon the division of the joint estate.

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Gebrek aan
toestemming, en
opskorting van
gade se
bevoegdheid.

Litigasie deur of
teen gades.

16. (1) Wanneer 'n gade die toestemming wat ingevolge subartikel (2) of (3) van artikel 15, of artikel 17, vereis word, weerhou, of wanneer die toestemming om 'n ander rede nie verkry kan word nie, kan 'n hof op aansoek van die ander gade hom verlof gee om die transaksie sonder die vereiste toestemming aan te gaan indien die hof oortuig is dat, in die geval waar die toestemming weerhou word, die weerhouding onredelik is of, in enige ander geval, daar goeie rede bestaan om van die toestemming af te sien. 5

(2) Indien 'n hof oortuig is dat dit ter beskerming van 'n gade se belang in die gemeenskaplike boedel noodsaaklik is, kan hy op aansoek van daardie gade enige bevoegdheid wat die ander gade kragtens hierdie Hoofstuk mag uitoefen, vir 'n bepaalde of 'n onbepaalde tydperk opskort. 10

17. (1) 'n Gade wat in gemeenskap van goed getroud is, mag 15 nie sonder die skriftelike toestemming van die ander gade geregtelike verrigtinge teen 'n ander persoon instel nie of geregtelike verrigtinge deur 'n ander persoon ingestel, bestry nie, behalwe geregtelike verrigtinge—

(a) ten aansien van sy afsonderlike goed; 20

(b) vir die verhaal van vergoeding, uitgesonderd vergoeding vir vermoenskade, weens die pleeg van 'n delik teen hom;

(c) ten aansien van 'n aangeleentheid wat betrekking het op sy beroep, bedryf of besigheid. 25

(2) 'n Party by geregtelike verrigtinge deur 'n gade ingestel of bestry, kan nie op grond van die gebrek aan toestemming vereis ingevolge subartikel (1) die geldigheid van die verrigtinge betwis nie.

(3) Indien koste teen 'n gade toegeken word in geregtelike verrigtinge wat hy sonder die toestemming vereis ingevolge subartikel (1) ingestel of bestry het, kan die hof, met inagneming van die ander gade se belang in die gemeenskaplike boedel en die rede vir die gebrek aan toestemming, gelas dat die koste van die afsonderlike goed van eersbedoelde gade, as daar is, verhaal 35 word en, vir sover daardie koste nie aldus verhaal kan word nie, dat dit van die gemeenskaplike boedel verhaal word, in welke geval die hof kan gelas dat daar by die verdeling van die gemeenskaplike boedel verrekening ten gunste van die ander gade moet geskied. 40

(4) 'n Aansoek om oorgawe van 'n gemeenskaplike boedel moet deur albei gades gedoen word, en 'n aansoek om die sekwestrasie van 'n gemeenskaplike boedel moet teen albei gades gedoen word.

(5) Waar 'n skuld van 'n gemeenskaplike boedel verhaalbaar 45 is, kan die gade wat die skuld aangegaan het of albei gades gesamentlik daarvoor aangespreek word, en waar 'n skuld vir benodigdhede vir die gesamentlike huishouding aangegaan is, kan die gades gesamentlik of afsonderlik daarvoor aangespreek word.

HOOFSTUK IV

50

ALGEMENE BEPALINGS

Sekere vergoeding
uitgesluit van
gemeenskap en
verhaalbaar op
ander gade.

18. Ondanks die feit dat 'n gade in gemeenskap van goed getroud is—

(a) val enige bedrag wat hy by wyse van vergoeding, uitgesonderd vergoeding vir vermoenskade, weens die pleeg van 'n delik teen hom, op enige persoon verhaal het, nie in die gemeenskaplike boedel nie, maar word dit sy afsonderlike goed;

(b) kan hy op die ander gade vergoeding, uitgesonderd vergoeding vir vermoenskade, verhaal ten opsigte van 60 liggaamlike beserings deur hom opgedoen en wat in die geheel of gedeeltelik aan die skuld van daardie gade te wyte is.

Aanspreeklikheid
weens delikte deur
gades gepleeg.

19. Wanneer 'n gade aanspreeklik is vir die betaling van skadevergoeding, met inbegrip van genoegdoening, weens 'n delik 65

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16. (1) When a spouse withholds the consent required in terms of subsection (2) or (3) of section 15, or section 17, or when that consent can for any other reason not be obtained, a court may on the application of the other spouse give him leave to enter into the transaction without the required consent if it is satisfied, in the case where the consent is withheld, that such withholding is unreasonable or, in any other case, that there is good reason to dispense with the consent.

Want of consent, and suspension of powers of spouse.

(2) If a court is satisfied that it is essential for the protection of the interest of a spouse in the joint estate, it may on the application of that spouse suspend for a definite or an indefinite period any power which the other spouse may exercise under this Chapter.

17. (1) A spouse married in community of property shall not without the written consent of the other spouse institute legal proceedings against another person or defend legal proceedings instituted by another person, except legal proceedings—

Litigation by or against spouses.

- (a) in respect of his separate property;
- (b) for the recovery of damages, other than damages for patrimonial loss, by reason of the commission of a delict against him;
- (c) in respect of a matter relating to his profession, trade or business.

(2) A party to legal proceedings instituted or defended by a spouse may not challenge the validity of the proceedings on the ground of want of the consent required in terms of subsection (1).

(3) If costs are awarded against a spouse in legal proceedings instituted or defended by him without the consent required in terms of subsection (1), the court may, with due regard to the interest of the other spouse in the joint estate and the reason for the want of consent, order that those costs be recovered from the separate property, if any, of the first-mentioned spouse and, in so far as those costs cannot be so recovered, that they be recovered from the joint estate, in which case the court may order that upon the division of the joint estate an adjustment shall be effected in favour of the other spouse.

(4) An application for the surrender of a joint estate shall be made by both spouses, and an application for the sequestration of a joint estate shall be made against both spouses.

(5) Where a debt is recoverable from a joint estate, the spouse who incurred the debt or both spouses jointly may be sued therefor, and where a debt has been incurred for necessities for the joint household, the spouses may be sued jointly or severally therefor.

CHAPTER IV

GENERAL PROVISIONS

18. Notwithstanding the fact that a spouse is married in community of property—

Certain damages excluded from community and recoverable from other spouse.

- (a) any amount recovered by him by way of damages, other than damages for patrimonial loss, by reason of a delict committed against him, does not fall into the joint estate but becomes his separate property;
- (b) he may recover from the other spouse damages, other than damages for patrimonial loss, in respect of bodily injuries suffered by him and attributable either wholly or in part to the fault of that spouse.

19. When a spouse is liable for the payment of damages, including damages for non-patrimonial loss, by reason of a delict

Liability for delicts committed by spouses.

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deur hom gepleeg, of wanneer 'n bydrae kragtens die Wet op die Verdeling van Skadevergoeding, 1956 (Wet No. 34 van 1956), op 'n gade verhaalbaar is, is dié skadevergoeding of bydrae en enige koste teen hom toegeken, van die afsonderlike goed, as daar is, van daardie gade verhaalbaar, en slegs vir sover hy nie afsonderlike goed het nie, van die gemeenskaplike boedel: Met dien verstande dat vir sover die skadevergoeding, bydrae of koste van die gemeenskaplike boedel verhaal is, verrekening ten gunste van die ander gade of sy boedel, na gelang van die geval, by die verdeling van die gemeenskaplike boedel moet geskied.

Bevoegdheid van hof om verdeling van gemeenskaplike boedel te gelas.

20. (1) 'n Hof kan op aansoek van 'n gade, indien hy daarvan oortuig is dat die gade se belang in die gemeenskaplike boedel deur die optrede of voorgenome optrede van die ander gade ernstig benadeel word of waarskynlik ernstig benadeel sal word, en dat ander persone nie daardeur benadeel sal word nie, die onmiddellike verdeling van die gemeenskaplike boedel in gelyke dele of op die ander grondslag wat die hof billik ag, gelas.

(2) 'n Hof wat 'n lasgewing kragtens subartikel (1) uitreik, kan gelas dat die gemeenskap van goed vervang word deur 'n ander huweliksgoederebedeling, onderworpe aan die voorwaardes wat hy goedvind.

Verandering van huweliksgoederebedeling.

21. (1) 'n Man en vrou, hetsy hulle voor of na die inwerking-treding van hierdie Wet in die huwelik getree het, kan gesamentlik by 'n hof aansoek doen om verlof om die huweliksgoederebedeling, met inbegrip van die maritale mag, wat op hul huwelik van toepassing is, te verander, en die hof kan, indien hy oortuig is dat—

- (a) daar gegronde rede vir die voorgenome verandering bestaan;
- (b) aan al die skuldeisers van die gades voldoende kennis van die voorgenome verandering gegee is; en
- (c) geen ander persoon deur die voorgenome verandering benadeel sal word nie,

gelas dat daardie huweliksgoederebedeling nie meer op hul huwelik van toepassing sal wees nie en hulle magtig om 'n notariële kontrak te sluit waardeur hul toekomstige huweliksgoederebedeling gereël word op die voorwaardes wat die hof goedvind.

(2) (a) Ondanks andersluidende bepalings van die een of ander wet of die gemene reg, maar behoudens die bepalings van paragrawe (b) en (c), kan die gades by 'n huwelik buite gemeenskap van goed wat voor die inwerking-treding van hierdie Wet gesluit is ingevolge huweliksvoorwaardes waardeur gemeenskap van goed en gemeenskap van wins en verlies uitgesluit is, die bepalings van Hoofstuk I ten opsigte van hul huwelik laat geld deur die verlyding en registrasie in 'n registrasiekantoor binne twee jaar na daardie inwerking-treding van 'n notariële kontrak met daardie strekking.

(b) Die bepalings van Hoofstuk I geld in so 'n geval vanaf die datum van die sluiting van die gades se huwelik of vanaf die datum van die verlyding van die betrokke notariële kontrak, na gelang die gades in daardie kontrak verklaar.

(c) Vir die doel van die bewys van die netto waarde van die gades se onderskeie boedels op die datum waarop die bepalings van Hoofstuk I aldus geld, kan hulle daardie waarde verklaar of in die betrokke notariële kontrak of te eniger tyd binne een jaar na die inwerking-treding van hierdie Wet in 'n opgawe soos beoog in artikel 6, en in laasgenoemde geval is die bepalings van genoemde artikel 6 *mutatis mutandis* ten opsigte van die opgawe van toepassing.

(d) By die toepassing van artikel 4 (1) word die aanvang van die betrokke huwelik geag die datum bedoel in paragraaf (b) te wees.

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committed by him or when a contribution is recoverable from a spouse under the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), such damages or contribution and any costs awarded against him are recoverable from the separate property, if any, of that spouse, and only in so far as he has no separate property, from the joint estate: Provided that in so far as such damages, contribution or costs have been recovered from the joint estate, an adjustment shall, upon the division of the joint estate, be effected in favour of the other spouse or his estate, as the case may be.

20. (1) A court may on the application of a spouse, if it is satisfied that the interest of that spouse in the joint estate is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced thereby, order the immediate division of the joint estate in equal shares or on such other basis as the court may deem just.

Power of court to order division of joint estate.

(2) A court making an order under subsection (1) may order that the community of property be replaced by another matrimonial property system, subject to such conditions as it may deem fit.

21. (1) A husband and wife, whether married before or after the commencement of this Act, may jointly apply to a court for leave to change the matrimonial property system, including the marital power, which applies to their marriage, and the court may, if satisfied that—

Change of matrimonial property system.

- (a) there are sound reasons for the proposed change;
- (b) sufficient notice of the proposed change has been given to all the creditors of the spouses; and
- (c) no other person will be prejudiced by the proposed change,

order that such matrimonial property system shall no longer apply to their marriage and authorize them to enter into a notarial contract by which their future matrimonial property system is regulated on such conditions as the court may think fit.

(2) (a) Notwithstanding anything to the contrary in any law or the common law contained, but subject to the provisions of paragraphs (b) and (c), the spouses to a marriage out of community of property entered into before the commencement of this Act in terms of an antenuptial contract by which community of property and community of profit and loss are excluded, may cause the provisions of Chapter I to apply in respect of their marriage by the execution and registration in a registry within two years after that commencement of a notarial contract to that effect.

(b) The provisions of Chapter I apply in such a case from the date of the conclusion of the marriage of the spouses or from the date of the execution of the notarial contract concerned, as the spouses may declare in that contract.

(c) For the purpose of proof of the net value of the respective estates of the spouses on the date on which the provisions of Chapter I so apply, they may declare that value either in the notarial contract concerned or at any time within one year after the commencement of this Act in a statement as contemplated in section 6, and in the last-mentioned case the provisions of the said section 6 apply *mutatis mutandis* in respect of that statement.

(d) For the purposes of section 4 (1) the commencement of the marriage concerned is deemed to be the date contemplated in paragraph (b).

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- (e) Die insluiting van 'n bate in 'n opgawe bedoel in artikel 6 geld nie as bewys van enige reg van iemand met betrekking tot daardie bate of vir die doel van enige vrygewing bedoel in artikel 21 (1) van die Insolvensiewet, 1936 (Wet No. 24 van 1936), nie.

5

Skenkings tussen gades toelaatbaar.

22. Behoudens die bepalings van die Insolvensiewet, 1936 (Wet No. 24 van 1936), is geen transaksie voor of na die inwerkingtreding van hierdie Wet uitgevoer nietig of vernietigbaar slegs omdat dit op 'n skenking tussen gades neerkom nie.

Aanspreeklikheid van gades vir huishoudelike benodigdhede.

23. (1) Enige verhaalsreg wat een gade ingevolge die gemene reg of die een of ander wet wat by die inwerkingtreding van hierdie Wet van krag is of voor daardie inwerkingtreding van krag was, teen die ander gade mag hê ten aansien van bydraes gemaak vir benodigdhede vir die gades se gesamentlike huishouding, verval, behoudens die bepalings van 15 subartikels (3) en (4), by dié inwerkingtreding.

(2) 'n Gade wat voor of na die inwerkingtreding van hierdie Wet buite gemeenskap van goed getroud is, is verplig om ten opsigte van benodigdhede vir die gesamentlike huishouding *pro rata* ooreenkomstig sy finansiële vermoë by te dra, en word geag 20 aldus verplig te gewees het vir die tydperk vanaf die aanvang van sy huwelik tot by dié inwerkingtreding.

(3) 'n Gade wat voor die inwerkingtreding van hierdie Wet buite gemeenskap van goed getroud is, het 'n verhaalsreg teen die ander gade vir sover hy ten opsigte van benodigdhede vir die 25 gesamentlike huishouding meer bygedra het as waartoe hy ingevolge subartikel (2) verplig was.

(4) By ontstentenis van 'n ooreenkoms tussen gades tot die teendeel, het 'n gade nie teen die ander gade met wie hy na die inwerkingtreding van hierdie Wet buite gemeenskap van goed 30 getroud is 'n verhaalsreg met betrekking tot enige bydrae wat hy ten opsigte van benodigdhede vir die gesamentlike huishouding gemaak het nie.

(5) Gades buite gemeenskap van goed getroud, is teenoor derdes gesamentlik en afsonderlik aanspreeklik vir alle skulde 35 deur die een of die ander van hulle ten opsigte van benodigdhede vir die gesamentlike huishouding aangegaan.

(6) Subartikel (1) word nie uitgelê as sou dit aan 'n gade 'n reg verleen om enigiets terug te eis wat hy by die inwerkingtreding van hierdie Wet reeds ter voldoening van 'n verhaalsreg ge- 40 presteer het nie, en subartikel (3) word nie uitgelê as sou dit aan 'n gade 'n reg verleen om die verhaalsreg vermeld in daardie subartikel uit te oefen ten opsigte van enige tydperk met betrekking waartoe hy reeds 'n verhaalsreg op 'n ander grondslag uitgeoefen het nie.

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Verdeling van huweliksgoed by ontbinding van huwelik weens gebrek aan toestemming van ouers of voog.

24. (1) Indien 'n hof 'n huwelik waarby 'n minderjarige 'n party is, ontbind op grond van die gebrek aan toestemming deur die ouers of voog van die minderjarige, of 'n kommissaris van kindersorg wie se toestemming regtens vir die aangaan van 'n huwelik vereis word, kan hy dié bevel met betrekking tot die verde- 50 ling van die huweliksgoed van die gades gee wat hy billik ag.

(2) Indien so 'n huwelik nie ontbind word nie, is die vermoënsregtelike gevolge van die huwelik dieselfde asof die minderjarige ten tyde van die sluiting van die huwelik meerderjarig was en word enige huweliksvoorwaardes ingevolge waarvan die 55 aanwasbedeling ingesluit is en wat met die oog op so 'n huwelik verly is, geag geldig verly te wees.

Toepassing van Hoofstukke II en III.

25. (1) Die bepalings van Hoofstukke II en III van hierdie Wet is nie van toepassing nie op huwelike ten aansien waarvan die huweliksgoederebedeling deur artikel 22 van die Swart Ad- 60 ministrasie Wet, 1927 (Wet No. 38 van 1927), bepaal word.

(2) Ondanks andersluidende bepalings van die een of ander wet of die gemene reg kan die gades by 'n huwelik, uitgesonderd 'n huwelik bedoel in subartikel (1), wat voor die inwerkingtreding van hierdie Wet gesluit is—

65

- (a) indien hulle in gemeenskap van goed getroud is, die bepalings van Hoofstukke II en III ten opsigte van hul huwelik laat geld;

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- (e) The inclusion of an asset in a statement contemplated in section 6 does not serve as proof of any right of any person with regard to that asset or for the purpose of any release contemplated in section 21 (1) of the Insolvency Act, 1936 (Act No. 24 of 1936).

22. Subject to the provisions of the Insolvency Act, 1936 (Act No. 24 of 1936), no transaction effected before or after the commencement of this Act is void or voidable merely because it amounts to a donation between spouses.

Donations between spouses permissible.

- 10 23. (1) Any right of recourse which a spouse may have against the other spouse in terms of the common law or any law which is in force at the commencement of this Act or which was in force before that commencement, in respect of contributions made for necessities for the joint household of the spouses, lapses, subject to the provisions of subsections (3) and (4), at that commencement.

Liability of spouses for household necessities.

(2) A spouse married out of community of property before or after the commencement of this Act is liable to contribute to necessities for the joint household *pro rata* according to his financial means, and is deemed to have been so liable for the period from the beginning of his marriage until that commencement.

(3) A spouse married out of community of property before the commencement of this Act has a right of recourse against the other spouse in so far as he has contributed more in respect of necessities for the joint household than that for which he was liable in terms of subsection (2).

(4) In the absence of any agreement to the contrary between spouses, a spouse does not have a right of recourse against the other spouse to whom he was married out of community of property after the commencement of this Act with regard to any contribution which he made in respect of necessities for the joint household.

(5) Spouses married out of community of property are jointly and severally liable to third parties for all debts incurred by either of them in respect of necessities for the joint household.

(6) Subsection (1) shall not be construed as conferring on a spouse a right to reclaim anything that he has already paid at the commencement of this Act in satisfaction of a right of recourse, and subsection (3) shall not be construed as conferring on a spouse a right to exercise the right of recourse referred to in that subsection in respect of any period with regard to which he has already exercised a right of recourse on any other ground.

24. (1) If a court dissolves a marriage to which a minor is a party on the ground of want of consent of the parents or guardian of that minor, or a commissioner of child welfare whose consent is by law required for the entering into of a marriage, it may make such order with regard to the division of the matrimonial property of the spouses as it may deem just.

Distribution of matrimonial property upon dissolution of marriage for want of consent of parents or guardian.

(2) If such a marriage is not dissolved, the patrimonial consequences of the marriage are the same as if the minor were of age when the marriage was entered into and any antenuptial contract in terms of which the accrual system is included and which has been executed with a view to such a marriage is deemed to have been validly executed.

25. (1) The provisions of Chapters II and III of this Act do not apply to marriages in respect of which the matrimonial property system is governed by section 22 of the Black Administration Act, 1927 (Act No. 38 of 1927).

Application of Chapters II and III.

(2) Notwithstanding anything to the contrary in any law or the common law contained, the spouses to a marriage, other than a marriage contemplated in subsection (1), entered into before the commencement of this Act may—

(a) if they are married in community of property, cause the provisions of Chapters II and III to apply to their marriage;

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- (b) indien hulle buite gemeenskap van goed getroud is en die maritale mag van die man nie ingevolge die betrokke huweliksvoorwaardes uitgesluit is nie, die bepalinge van Hoofstuk II ten opsigte van hul huwelik laat geld,

5
deur die verlyding en registrasie in 'n registrasiekantoor binne twee jaar na genoemde inwerkingtreding van 'n notariële kontrak met daardie strekking, en in so 'n geval geld dié bepalinge vanaf die datum waarop die betrokke kontrak aldus geregistreer is.

10

Toepassing van artikels 1 en 2 van Wet 37 van 1953.

26. Artikels 1 en 2 van die Wet op Huweliksaangeleenthede, 1953 (Wet No. 37 van 1953), is nie van toepassing op huwelike ten opsigte waarvan die bepalinge van artikel 25 (2) van hierdie Wet van toepassing gemaak is of op huwelike na die inwerkingtreding van hierdie Wet gesluit nie, uitgesonderd huwelike ten 15 aansien waarvan die huweliksgoederebedeling deur artikel 22 van die Swart Administrasie Wet, 1927 (Wet No. 38 van 1927), bepaal word.

Wysiging van artikel 1 van Wet 13 van 1934, soos gewysig deur artikel 15 van Wet 93 van 1962 en artikel 1 van Wet 44 van 1982.

27. Artikel 1 van die Erfopvolging Wet, 1934 (Wet No. 13 van 1934), word hierby gewysig deur paragraaf (b) van subartikel (1) 20 deur die volgende paragraaf te vervang:

“(b) wanneer die eggenote buite gemeenskap van goedere gehuud was en wanneer die oorlede eggenoot 'n afstammeling agterlaat wat geregtig is om *ab intestato* te erwe, erf die oorblywende eggenoot—

25

(i) in die geval waar die bepalinge van Hoofstuk I van die Wet op Huweliksgoedere, 1984, nie op so 'n eggenoot van toepassing is nie, ten bedrae van 'n kindsdeel of soveel as wat vyftigduisend rand in waarde nie te bowe gaan nie (watter van die twee 30 die grootste is); en

(ii) in die geval waar die bepalinge van daardie Hoofstuk op so 'n eggenoot van toepassing is, ten bedrae van 'n kindsdeel of soveel as wat tesame met sy of haar aandeel van die aanwas van die huwelikspartye se boedels, bepaal ooreenkomstig daardie Hoofstuk, vyftigduisend rand in waarde nie te bowe gaan nie (watter van die twee die grootste is);”.

35

Wysiging van artikel 3 van Wet 47 van 1937, soos vervang deur artikel 2 van Wet 87 van 1965 en gewysig deur artikel 1 van Wet 41 van 1977, artikel 1 van Wet 92 van 1978, artikel 1 van Wet 44 van 1980 en artikel 3 van Wet 27 van 1982.

28. Artikel 3 van die Registrasie van Aktes Wet, 1937 (Wet 40 No. 47 van 1937), word hierby gewysig deur paragraaf (k) van subartikel (1) deur die volgende paragraaf te vervang:

“(k) huweliksvoorwaardes, met inbegrip van lasgewings kragtens artikel 20, en kontrakte beoog in artikel 21, van die Wet op Huweliksgoedere, 1984, registreer, en 45 notariële skenkingsaktes (met inbegrip van aktes wat betrekking het op toevertroude skenkings) en ander notariële aktes registreer wat betrekking het op persone en goedere binne die gebied van die betrokke registrasiekantoor en wat regtens geregistreer moet of 50 mag word;”.

Vervanging van artikel 17 van Wet 47 van 1937, soos gewysig deur artikel 1 van Wet 15 van 1953, artikel 8 van Wet 43 van 1957, artikel 8 van Wet 43 van 1962 en artikel 5 van Wet 3 van 1972.

29. Artikel 17 van die Registrasie van Aktes Wet, 1937, word hierby deur die volgende artikel vervang:

“Registrasie van onroerende goed op naam van getroude persone. 17. (1) Vanaf die inwerkingtreding van die Wet op Huweliksgoedere, 1984, word onroerende goed, 55 saaklike regte oor onroerende goed en notariële verbande wat by die transport, oordrag of registrasie daarvan deel van 'n gemeenskaplike boedel sou uitmaak, uitgesonderd landbougrond soos omskryf in die Wet op die Onderverdeling van Landbougrond, 1970 60 (Wet No. 70 van 1970), op naam van die man en die vrou geregistreer tensy dié transport, oordrag of registrasie slegs op naam van 'n vennootskap geskied, en die man of vrou slegs in die hoedanigheid van vennoot in daardie vennootskap daarby betrokke is. 65

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(b) if they are married out of community of property and the marital power of the husband was not excluded in terms of the antenuptial contract concerned, cause the provisions of Chapter II to apply to their marriage, by the execution and the registration in a registry within two years after the said commencement of a notarial contract to that effect, and in such a case those provisions apply from the date on which the contract concerned was so registered.

26. Sections 1 and 2 of the Matrimonial Affairs Act, 1953 (Act No. 37 of 1953), do not apply to marriages in respect of which the provisions of section 25 (2) of this Act have been applied or to marriages concluded after the commencement of this Act, other than marriages in respect of which the matrimonial property system is governed by section 22 of the Black Administration Act, 1927 (Act No. 38 of 1927).

Application of sections 1 and 2 of Act 37 of 1953.

27. Section 1 of the Succession Act, 1934 (Act No. 13 of 1934), is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

Amendment of section 1 of Act 13 of 1934, as amended by section 15 of Act 93 of 1962 and section 1 of Act 44 of 1982.

“(b) if the spouses were married out of community of property and if the deceased spouse leaves any descendant who is entitled to succeed *ab intestato*, the surviving spouse shall succeed—

- (i) in the case where the provisions of Chapter I of the Matrimonial Property Act, 1984, are not applicable to such a spouse, to the extent of a child's share or to so much as does not exceed fifty thousand rand in value (whichever is the greater); and
- (ii) in the case where the provisions of that Chapter are applicable to such a spouse, to the extent of a child's share or to so much as together with his or her share of the accrual of the estates of the spouses, determined in accordance with that Chapter, does not exceed fifty thousand rand in value (whichever is the greater);”

28. Section 3 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended by the substitution for paragraph (k) of subsection (1) of the following paragraph:

Amendment of section 3 of Act 47 of 1937, as substituted by section 2 of Act 87 of 1965 and amended by section 1 of Act 41 of 1977, section 1 of Act 92 of 1978, section 1 of Act 44 of 1980 and section 3 of Act 27 of 1982.

“(k) register antenuptial contracts, including orders under section 20, and contracts contemplated in section 21, of the Matrimonial Property Act, 1984, and register such notarial deeds of donation (including a donation to be held in trust) and such other notarial deeds having reference to persons and property within the area served by the registry in question as are required or permitted by law to be registered;”

29. The following section is hereby substituted for section 17 of the Deeds Registries Act, 1937:

Substitution of section 17 of Act 47 of 1937, as amended by section 1 of Act 15 of 1953, section 8 of Act 43 of 1957, section 8 of Act 43 of 1962 and section 5 of Act 3 of 1972.

17. (1) From the commencement of the Matrimonial Property Act, 1984, immovable property, real rights in immovable property and notarial deeds which would upon transfer, cession or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, excluding agricultural land as defined in the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), unless that transfer, cession or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of partner in that partnership.

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(2) Elke akte deur of ten behoeve of ten gunste van enige persoon wat deur 'n registrateur verly of geattesteer is, of deur 'n notaris geattesteer is en in 'n registrasiekantoor geregistreer moet word, moet—

- (a) die volle naam en huwelikstaats van die betrokke persoon vermeld; 5
- (b) waar die reg wat in die Republiek of 'n deel daarvan geld die betrokke huwelik bepaal, vermeld of die huwelik in of buite gemeenskap van goed aangegaan is; 10
- (c) waar die betrokke persoon in gemeenskap van goed getroud is, die volle naam van sy gade vermeld; en
- (d) waar die reg van 'n ander land die betrokke huwelik bepaal, vermeld dat die huwelik deur die reg van daardie land bepaal word. 15

(3) Waar 'n huwelik in gemeenskap van goed deur die dood van een van die gades ontbind is voordat goed wat by die transport of oordrag daarvan deel van die gemeenskaplike boedel sou uitmaak, getranspoteer of oorgedra kon word, word die goed aan die gemeenskaplike boedel van die gades getranspoteer of oorgedra in afwagting van die bereddering van die boedel, en word dit, behoudens die bepalinge van 'n beskikking met betrekking tot daardie goed, geag die gemeenskaplike eiendom van die langsewende gade en die boedel van die oorlede gade te wees. 20

(4) Indien onroerende goed wat deel van 'n gemeenskaplike boedel uitmaak in 'n registrasiekantoor op naam van of die man of die vrou geregistreer is, moet die registrateur, indien hy van die tersaaklike feite oortuig is, op skriftelike aansoek van die man of die vrou, na gelang van die geval, op die titelbewys van daardie goed of, indien die titelbewys om die een of ander rede nie aan hom voorgelê kan word nie, slegs op die registrasieduplikaat daarvan, en in die toepaslike registers, 'n aantekening maak met die strekking dat dit goed is ten opsigte waarvan die bepalinge van artikel 15 (2) (a) van die Wet op Huweliksgoedere, 1984, van toepassing is. 25

(5) Die registrasie van 'n reg op 'n mineraal op naam van 'n man en 'n vrou ooreenkomstig die bepalinge van subartikel (1) word nie uitgelê as sou dit die verdeling van 'n reg op enige mineraal of minerale ten opsigte van grond tussen daardie man en vrou in onverdeelde aandeel, of 'n vermeerdering van die aantal houeers van onverdeelde aandeel in 'n reg op enige mineraal of minerale ten opsigte van grond soos bedoel in artikel 2 van die Aanvullende Wet op die Mineralewette, 1975 (Wet No. 10 van 1975), uitmaak nie. 30

(6) 'n Vrou wat buite gemeenskap van goed getroud is, moet deur haar man bygestaan word by die ondertekening van enige akte of ander dokument wat in 'n registrasiekantoor geregistreer moet of kan word of wat vertoon moet of kan word in verband met so 'n akte of dokument, tensy die maritale mag uitgesluit is of tensy die registrateur ingevolge die bepalinge van hierdie Wet of om ander redes die bystand van die man onnodig ag. 35

stand van die man onnodig ag." 60

Wysiging van artikel 25 van Wet 47 van 1937, soos gewysig deur artikel 10 van Wet 43 van 1962.

30. Artikel 25 van die Registrasie van Aktes Wet, 1937, word hierby gewysig deur in subartikel (3) die uitdrukking "subartikel (3) van artikel sewentien" deur die uitdrukking "artikel 17 (1)" te vervang. 65

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(2) Every deed executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, shall—

- 5 (a) state the full name and marital status of the person concerned;
- (b) where the marriage concerned is governed by the law in force in the Republic or any part thereof, state whether the marriage was contracted in or out of community of property;
- 10 (c) where the person concerned is married in community of property, state the full name of his spouse; and
- 15 (d) where the marriage concerned is governed by the law of any other country, state that the marriage is governed by the law of that country.

(3) Where a marriage in community of property has been dissolved by the death of one of the spouses before property which on transport or cession thereof would have formed part of the joint estate could be transferred or ceded, that property shall be transferred or ceded to the joint estate of the spouses, pending the administration thereof, and is, subject to the provisions of any disposition with regard to that property, deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

(4) If immovable property forming part of a joint estate is registered in a deeds registry in the name of either the husband or the wife, the registrar shall on the written application of the husband or the wife, as the case may be, if he is satisfied as to the relevant facts, make a note on the title deed of that property, or if the title deed can for any reason not be produced to him, only on the registry duplicate thereof, and in the appropriate registers, to the effect that it is property in respect of which the provisions of section 15 (2) (a) of the Matrimonial Property Act, 1984, apply.

(5) The registration of a right to a mineral in the name of a husband and a wife according to the provisions of subsection (1) shall not be construed as constituting the division of any right to any mineral or minerals in respect of any land between that husband and wife into undivided shares, or an increase in the number of holders of undivided shares in any right to any mineral or minerals in respect of any land as contemplated in section 2 of the Mineral Laws Supplementary Act, 1975 (Act No. 10 of 1975).

(6) A woman married out of community of property shall be assisted by her husband in executing any deed or other document required or permitted to be registered in any deeds registry or required or permitted to be produced in connection with any such deed or document, unless the marital power has been excluded or unless the assistance of the husband is in terms of this Act or on other grounds deemed by the registrar to be unnecessary.”

60 30. Section 25 of the Deeds Registries Act, 1937, is hereby amended by the substitution in subsection (3) for the expression “subsection (3) of section *seventeen*” of the expression “section 17 (1)”.

Amendment of section 25 of Act 47 of 1937, as amended by section 10 of Act 43 of 1962.

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Wysiging van
artikel 45 van
Wet 47 van 1937,
soos gewysig deur
artikel 20 van
Wet 43 van 1957
en artikel 19 van
Wet 43 van 1962.

31. Artikel 45 van die Registrasie van Aktes Wet, 1937, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Indien onroerende goed of ’n huurkontrak ingevolge ’n wet op nedersetting of ’n verband in ’n registrasiekantoor 5 geregistreer staan op naam van die langselewende van twee eggenote wat in gemeenskap van goedere getroud was, of op naam van die gesamentlike boedel van sodanige eggenote, of op naam van beide sodanige eggenote, en die langselewende eggenoot die oorlede eggenoot se aandeel in die 10 goed, kontrak of verband wettig verkry het, moet die registrateur op skriftelike aansoek van die eksekuteur in die boedel van die oorlede eggenoot en van die langselewende eggenoot, behalwe waar die langselewende eggenoot as eksekuteur geteken het, vergesel van sodanige ander dokumente 15 as wat voorgeskryf mag wees, op die titelbewys van die goed of op die huurkontrak of op die verbandakte aanteken dat die langselewende eggenoot geregtig is om oor daardie goed, kontrak of verband te beskik, en daarop is daardie eggenoot geregtig om daarvoor te beskik asof hy formeel 20 transport of oordrag van die oorlede eggenoot se aandeel in die goed, kontrak of verband op sy eie naam verkry het.”.

Invoeging van
artikel 89 in
Wet 47 van 1937.

32. Die volgende artikel word hierby in die Registrasie van Aktes Wet, 1937, na artikel 88 ingevoeg:

“Registrasie van na-huwelikse kontrakte.

89. (1) Die bepalings van artikels 86 en 87 is *mutatis mutandis* van toepassing ten opsigte van—

(a) ’n lasgewing kragtens artikel 20 van die Wet op Huweliksgoedere, 1984, asof dié lasgewing ’n notariële kontrak was; en

(b) ’n kontrak ingevolge artikel 21 of 25 (2) van die Wet op Huweliksgoedere, 1984.

(2) Waar ’n kontrak ingevolge artikel 21 of 25 (2) (b) van die Wet op Huweliksgoedere, 1984, bestaande huweliksvoorwaardes vervang of wysig, moet die kontrak wat geregistreer staan te word, van die 35 bestaande huweliksvoorwaardes of ’n gesertifiseerde afskrif daarvan vergesel gaan.

(3) By die registrasie van ’n kontrak beoog in artikel 21 of 25 (2) (b) van die Wet op Huweliksgoedere, 1984, word die bestaande huweliksvoorwaardes, as 40 daar is, gekanselleer of paslik geëndoseer, na gelang van die geval, en vir dié doel gee die registrateur kennis aan die registrateur van die registrasiekantoor waar die bestaande huweliksvoorwaardes geregistreer is en aan elke registrateur in wie se registrasiekantoor ’n afskrif daarvan ingevolge artikel 87 (3) ge- 45 liasseer is.”.

Wysiging van
artikel 2 van
Wet 34 van 1956,
soos gewysig deur
artikel 1 van
Wet 58 van 1971.

33. Artikel 2 van die Wet op Verdeling van Skadevergoeding, 1956 (Wet No. 34 van 1956), word hierby gewysig—

(a) deur subartikel (1A) deur die volgende subartikel te 50 vervang:

“(1A) [Behoudens die bepalings van die eerste voorbehoudsbepaling by subartikel (6) (a) word] ’n Persoon word by die toepassing van hierdie artikel geag ’n mededader te wees indien hy ’n mededader sou gewees 55 het as dit nie was vir die feit dat hy binne gemeenskap van goedere met die eiser getroud is nie.”; en

(b) deur die eerste voorbehoudsbepaling by subartikel (6) (a) te skrap.

34. Die volgende artikel word hierby in die Huwelikswet, 1961 60 (Wet No. 25 van 1961), na artikel 24 ingevoeg:

“Gevolge en ontbinding van huwelik weens gebrek

24A. (1) Ondanks andersluidende bepalings van die een of ander wet of die gemene reg is ’n huwelik tussen persone van wie een of albei minderjarig is, 65 nie nietig bloot omrede die ouers of voog van die

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31. Section 45 of the Deeds Registries Act, 1937, is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 45 of Act 47 of 1937, as amended by section 20 of Act 43 of 1957 and section 19 of Act 43 of 1962.

- “(1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of the survivor of two spouses who were married in community of property, or in the name of the joint estate of such spouses, or in the name of both such spouses, and **[such survivor]** the surviving spouse has lawfully acquired the share of the deceased spouse in the property, lease or bond, the registrar shall on written application by the executor in the estate of the deceased spouse and by **[such survivor]** the surviving spouse save where **[such survivor]** the surviving spouse has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the deed of lease or on the bond that the **[survivor]** surviving spouse is entitled to deal with such property, lease or bond, and thereupon **[such survivor]** he shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property, lease or bond.”.

32. The following section is hereby inserted in the Deeds Registries Act, 1937, after section 88:

Insertion of section 89 in Act 47 of 1937.

25 “Registration of postnuptial contracts. 89. (1) The provisions of sections 86 and 87 shall *mutatis mutandis* apply in respect of—

- (a) an order under section 20 of the Matrimonial Property Act, 1984, as if that order were a notarial deed;
- 30 (b) a contract in terms of section 21 or 25 (2) of the Matrimonial Property Act, 1984.

(2) Where a contract in terms of section 21 or 25 (2) (b) of the Matrimonial Property Act, 1984, replaces or amends an existing antenuptial contract, the contract to be registered shall be accompanied by the existing contract or a certified copy thereof.

(3) Upon the registration of a contract contemplated in section 21 or 25 (2) (b) of the Matrimonial Property Act, 1984, the existing antenuptial contract, if any, shall be cancelled or endorsed appropriately, as the case may be, and for that purpose the registrar shall notify the registrar of the registry where the existing contract is registered and every registrar in whose registry a copy thereof is filed in terms of section 87 (3).”.

33. Section 2 of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), is hereby amended—

Amendment of section 2 of Act 34 of 1956, as amended by section 1 of Act 58 of 1971.

- (a) by the substitution for subsection (1A) of the following subsection:

50 “(1A) **[Subject to the provisions of the first proviso to subsection (6) (a)]** A person shall for the purposes of this section be regarded as a joint wrongdoer if he would have been a joint wrongdoer but for the fact that he is married in community of property to the plaintiff.”; and

- 55 (b) by the deletion of the first proviso to subsection (6) (a).

34. The following section is hereby inserted in the Marriage Act, 1961 (Act No. 25 of 1961), after section 24:

Insertion of section 24A in Act 25 of 1961.

60 “Consequences and dissolution of

24A. (1) Notwithstanding anything to the contrary contained in any law or the common law a marriage between persons of whom one or both are minors shall not be void merely because the parents or

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aan toestem- minderjarige, of 'n kommissaris van kindersorg wie
ming van se toestemming regtens vir die aangaan van 'n huwe-
ouers of lik vereis word, nie tot die huwelik toegestem het
voog. nie, maar kan dit deur 'n bevoegde hof op grond van
die gebrek aan toestemming ontbind word indien 5
aansoek om die ontbinding van die huwelik gedoen
word—
(a) deur 'n ouer of voog van die minderjarige voor-
dat hy meerderjarigheid bereik en binne ses
weke vanaf die datum waarop die ouer of voog 10
van die bestaan van die huwelik bewus word; of
(b) deur die minderjarige voordat hy meerderjarig-
heid bereik of binne drie maande daarna.
(2) 'n Hof staan 'n aansoek ingevolge subartikel
(1) nie toe nie tensy hy oortuig is dat die ontbinding 15
van die huwelik in die belang van die minderjarige of
minderjariges is.”.

Wysiging van
artikel 29 van
Wet 32 van 1944,
soos vervang deur
artikel 27 van
Wet 94 van 1974
en gewysig deur
artikel 1 van
Wet 56 van 1984.

35. Artikel 29 van die Wet op Landdroshowe, 1944 (Wet No.
32 van 1944), word hierby gewysig deur na paragraaf (e) van
subartikel (1) die volgende paragraaf in te voeg: 20
“(eA) aksies ingevolge artikel 16 (1) van die Wet op Huwe-
liksgoedere, 1984, waar die vordering of die waarde
van die goed in geskil hoogstens R5 000 is;”.

Wysiging van
artikel 7 van
Wet 70 van 1979.

36. Artikel 7 van die Wet op Egskeiding, 1979 (Wet No. 70
van 1979), word hierby gewysig— 25

(a) deur subartikel (2) deur die volgende subartikel te ver-
vang:

“(2) By ontstentenis van 'n bevel gegee kragtens sub-
artikel (1) met betrekking tot die betaling van onder-
houd deur een party aan die ander kan die hof, met in- 30
agneming van die bestaande of verwagte vermoëns van
elk van die partye, hulle onderskeie verdienvermoëns,
finansiële behoeftes en verpligtinge, die ouderdom van
elk van die partye, die duur van die huwelik, die le-
wenspeil van die partye voor die egskeiding, hulle ge- 35
drag vir sover dit op die verbroekeling van die huwelik
betrekking het, 'n bevel ingevolge subartikel (3) en
enige ander faktor wat na die oordeel van die hof in
aanmerking geneem behoort te word, 'n bevel gee wat
die hof billik ag met betrekking tot die betaling van on- 40
derhoud deur die een party aan die ander vir enige tyd-
perk tot die dood of hertroue van die party ten gunste
van wie die bevel gegee is, na gelang die een of die an-
der eerste plaasvind.”; en

(b) deur die volgende subartikels by te voeg: 45

“(3) 'n Hof wat 'n egskeidingsbevel verleen ten op-
sigte van 'n huwelik buite gemeenskap van goed wat
voor die inwerkingtreding van die Wet op Huwe-
liksgoedere, 1984, gesluit is ingevolge huweliksvoor-
waardes waardeur gemeenskap van goed, gemeenskap 50
van wins en verlies en aanwasdeling in enige vorm uit-
gesluit is, kan, behoudens die bepalings van subartikel
(4), (5) en (6), op aansoek van een van die partye by
die huwelik, by ontstentenis van 'n ooreenkoms tussen
hulle betreffende die verdeling van hul bates, beveel 55
dat dié bates, of dié gedeelte van die bates, van die an-
der party wat die hof billik ag aan eersgenoemde party
oorgedra word.

(4) 'n Bevel kragtens subartikel (3) word nie gegee
nie tensy die hof oortuig is dat dit billik en regverdig 60
is op grond daarvan dat die party ten gunste van wie
die bevel gegee word tydens die duur van die huwelik
direk of indirek bygedra het tot die instandhouding of
groei van die boedel van die ander party, hetsy deur 65
die lewering van dienste, of die besparing van uitgawes
wat andersins aangegaan sou moes word, of op enige
ander wyse.

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marriage for
want of
consent of
parents or
guardian.

5 guardian of the minor, or a commissioner of child
welfare whose consent is by law required for the en-
tering into of a marriage, did not consent to the mar-
riage, but may be dissolved by a competent court on
the ground of want of consent if application for the
dissolution of the marriage is made—

(a) by a parent or guardian of the minor before he
attains majority and within six weeks of the date
on which the parent or guardian becomes aware
of the existence of the marriage; or

10 (b) by the minor before he attains majority or with-
in three months thereafter.

(2) A court shall not grant an application in terms
of subsection (1) unless it is satisfied that the dissolu-
tion of the marriage is in the interest of the minor or
15 minors.”

35. Section 29 of the Magistrates' Courts Act, 1944 (Act No.
32 of 1944), is hereby amended by the insertion after paragraph
(e) of the following paragraph:

20 “(eA) actions in terms of section 16 (1) of the Matrimonial
Property Act, 1984, where the claim or the value of the
property in dispute does not exceed R5 000;”.

Amendment of
section 29 of
Act 32 of 1944,
as substituted by
section 27 of
Act 94 of 1974
and amended by
section 1 of
Act 56 of 1984.

36. Section 7 of the Divorce Act, 1979 (Act No. 70 of 1979), is
hereby amended—

Amendment of
section 7 of
Act 70 of 1979.

25 (a) by the substitution for subsection (2) of the following
subsection:

“(2) In the absence of an order made in terms of sub-
section (1) with regard to the payment of maintenance
by the one party to the other, the court may, having re-
gard to the existing or prospective means of each of the
30 parties, their respective earning capacities, financial
needs and obligations, the age of each of the parties,
the duration of the marriage, the standard of living of
the parties prior to the divorce, their conduct in so far
as it may be relevant to the break-down of the mar-
riage, an order in terms of subsection (3) and any other
factor which in the opinion of the court should be taken
into account, make an order which the court finds just
in respect of the payment of maintenance by the one
40 party to the other for any period until the death or re-
marriage of the party in whose favour the order is
given, whichever event may first occur.”; and

(b) by the addition of the following subsections:

“(3) A court granting a decree of divorce in respect
45 of a marriage out of community of property entered
into before the commencement of the Matrimonial
Property Act, 1984, in terms of an antenuptial contract
by which community of property, community of profit
and loss and accrual sharing in any form are excluded,
50 may, subject to the provisions of subsection (4), (5)
and (6), on application by one of the parties to that
marriage, in the absence of any agreement between
them regarding the division of their assets, order that
such assets, or such part of the assets, of the other party
55 as the court may deem just be transferred to the
first-mentioned party.

(4) An order under subsection (3) shall not be grant-
ed unless the court is satisfied that it is equitable and
just by reason of the fact that the party in whose favour
the order is granted, contributed directly or indirectly
60 to the maintenance or increase of the estate of the
other party during the subsistence of the marriage,
either by the rendering of services, or the saving of ex-
penses which would otherwise have been incurred, or
65 in any other manner.

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(5) By die bepaling van die bates of die gedeelte van die bates wat oorgedra moet word soos in subartikel (3) bedoel, neem die hof, benewens enige direkte of indirekte bydrae deur die betrokke party tot die instandhouding of groei van die boedel van die ander party gelewer soos in subartikel (4) bedoel, ook in aanmerking—

(a) die bestaande vermoëns en verpligtinge van die partye;

(b) enige skenking wat tydens die duur van die huwelik deur die een party aan die ander gemaak is, of wat kragtens die betrokke huweliksvoorwaardes verskuldig en afdwingbaar is;

(c) enige bevel deur die hof kragtens artikel 9 van hierdie Wet of kragtens enige ander wet gemaak wat die vermoënsposisie van die partye raak; en

(d) enige ander faktor wat na die oordeel van die hof in aanmerking geneem behoort te word.

(6) 'n Hof wat 'n bevel kragtens subartikel (3) gee, kan, op aansoek deur die party teen wie die bevel gegee word, gelas dat voldoening aan die bevel uitgestel word op dié voorwaardes, met inbegrip van voorwaardes betreffende die stel van sekerheid, die betaling van rente, die betaling van paaiemente, en die lewering of oordrag van bepaalde bates, wat die hof billik ag.”

Herroeping
van wette.

37. Die wette vermeld in die Bylae word hierby herroep in die mate uiteengesit in die derde kolom van die Bylae.

Kort titel en
inwerkingtreding.

38. (1) Hierdie Wet heet die Wet op Huweliksgoedere, 1984, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

(2) Verskillende datums kan kragtens subartikel (1) ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

Bylae

Nommer en jaar van wet	Titel of onderwerp	In hoeverre herroep
Die Ewige Edik van 4 Oktober 1540.....	Die Ewige Edik	Artikel 17 vir sover dit in die Republiek van krag is
Die Politieke Ordonnansie van 1 April 1580.....	Die Politieke Ordonnansie	Artikels 3 en 13 vir sover hulle in die Republiek van krag is
Wet No. 13 van 1883 (Natal)	“To amend the Law of Divorce”	Artikels 10 en 11
Wet No. 37 van 1953...	Wet op Huweliksaangeleenthede, 1953	Artikel 3
Wet No. 13 van 1976...	Wysigingswet op Huweliksaangeleenthede, 1976.....	Die geheel

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(5) In the determination of the assets or part of the assets to be transferred as contemplated in subsection (3) the court shall, apart from any direct or indirect contribution made by the party concerned to the maintenance or increase of the estate of the other party as contemplated in subsection (4), also take into account—

- (a) the existing means and obligations of the parties;
- (b) any donation made by one party to the other during the subsistence of the marriage, or which is owing and enforceable in terms of the antenuptial contract concerned;
- (c) any order which the court grants under section 9 of this Act or under any other law which affects the patrimonial position of the parties; and
- (d) any other factor which should in the opinion of the court be taken into account.

(6) A court granting an order under subsection (3) may, on application by the party against whom the order is granted, order that satisfaction of the order be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified assets, as the court may deem just.”.

37. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule. Repeal of laws.

38. (1) This Act shall be called the Matrimonial Property Act, 1984, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. Short title and commencement.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

Schedule

Number and year of law	Title or subject	Extent of repeal
The Perpetual Edict of 4 October 1540	The Perpetual Edict	Section 17 in so far as it is in force in the Republic
The Political Ordinance of 1 April 1580	The Political Ordinance	Sections 3 and 13 in so far as they are in force in the Republic
Law No. 13 of 1883 (Natal)	To amend the Law of Divorce ...	Sections 10 and 11
Act No. 37 of 1953	Matrimonial Affairs Act, 1953 ..	Section 3
Act No. 13 of 1976	Matrimonial Affairs Amendment Act, 1976	The whole

