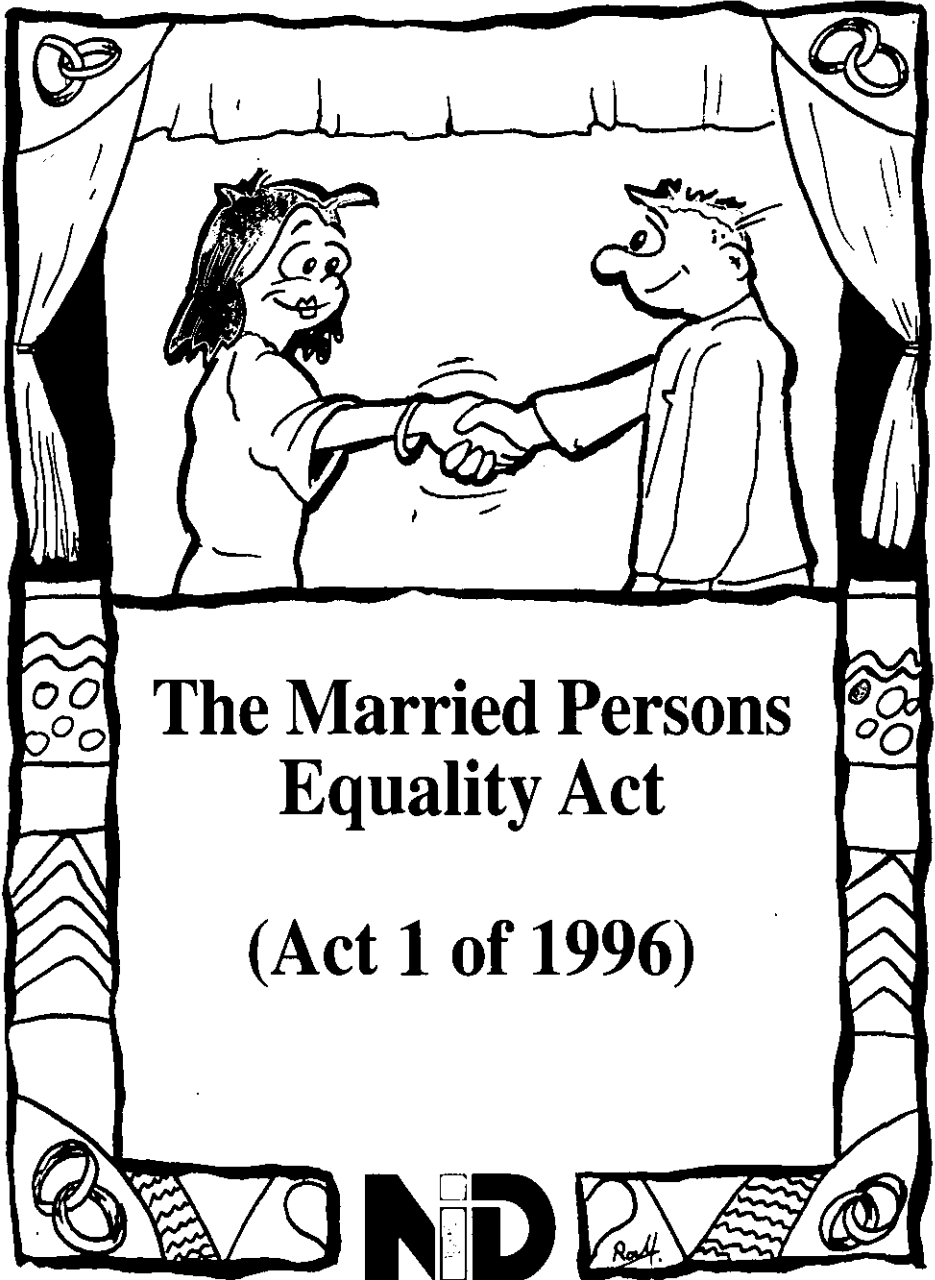


Date Printed: 04/22/2009

JTS Box Number: IFES_67
Tab Number: 99
Document Title: The Married Persons Equality Act
Document Date: 1997
Document Country: Namibia
Document Language: English
IFES ID: CE01196



* 5 D D A 3 1 B F - E F 0 4 - 4 5 A 5 - 9 A 7 F - D 3 3 A 4 0 0 D 0 3 D 3 *



The Married Persons Equality Act

(Act 1 of 1996)

ND

NAMIBIA INSTITUTE FOR DEMOCRACY

ISBN: 99916-751-0-8

Published by the Namibia Institute for Democracy in
co-operation with the Department of Women Affairs.

The printing of this booklet was made possible by the
sponsorship of the Konrad Adenauer Foundation.

© July 1997. Namibia Institute for Democracy.
All rights reserved

The Married Persons Equality Act (Act 1 of 1996)



Namibia Institute for Democracy

P.O. Box 11956

Windhoek

Namibia

Tel. 061-229117/8

Fax 061-229119

e-mail: democracy@iwwn.com.na

WWW: <http://www.iwwn.com.na/nid>



Department of Women Affairs

Private Bag 13339

Windhoek

Namibia

Tel. 061-220010

Fax 061-223545



**Konrad
- Adenauer-
Stiftung**

Internationale Zusammenarbeit

Konrad-Adenauer-Stiftung

P.O. Box 1145

Windhoek

Namibia

Tel. 061-232156

Fax 061-225678

ACT

To abolish the marital power; to amend the matrimonial property law of marriages in community of property; to provide for domicile of married women; to provide for domicile and guardianship of minor children; to further regulate the liability for household necessities of spouses married out of community of property; to amend certain laws to give effect to the abolition of marital power; and to provide for matters incidental thereto.

(Signed by the President on 20 May 1996)

ARRANGEMENT OF ACT

1. Definitions

PART I ABOLITION OF MARITAL POWER

2. Abolition of marital power
3. Effect of abolition of marital power

PART II PROVISIONS REGARDING MARRIAGES IN COMMUNITY OF PROPERTY

4. Application of this Part
5. Equal powers of spouses married in community of property
6. Spouse's juristic acts generally not subject to other spouse's consent
7. Acts requiring other spouse's consent
8. Consequences of act performed without required consent
9. Litigation by or against spouses
10. Power of court to dispense with spouse's consent with regard to specific juristic act
11. Power of court to suspend powers of spouse

PART III
PROVISIONS REGARDING DOMICILE OF MARRIED WOMEN
AND DOMICILE AND GUARDIANSHIP OF MINOR CHILDREN

12. Domicile of married women
13. Domicile of minor children
14. Guardianship of minor children of a marriage

PART IV
PROVISIONS REGARDING MARRIAGES OUT OF
COMMUNITY OF PROPERTY

15. Liability of spouses married out of community of property for household necessities

PART V
MISCELLANEOUS AND AMENDMENT
OF CERTAIN LAWS

16. Provisions not applicable to marriages by customary law
17. Amendment of section 1 of Matrimonial Causes Jurisdiction Act, 1939
18. Amendment of section 5 of Magistrates' Courts Act, 1944
19. Amendment of section 111 of Magistrates' Courts Act, 1944
20. Repeal of section 1, 2 and 3 of Matrimonial Affairs Ordinance, 1955
21. Amendment of section 4 of Matrimonial Affairs Ordinance, 1955
22. Amendment of First Schedule to Defence Act, 1957
23. Amendment of section 1 of Marriage Act, 1961
24. Amendment of section 26 of Marriage Act, 1961
25. Substitution of certain expression in Marriage Act, 1961
26. Substitution of section 23 of Banks Act, 1965
27. Repeal of section 17 of Administration of Estates Act, 1965
28. Amendment of section 72 of Administration of Estates Act, 1965
29. Substitution of section 85 of Administration of Estates Act, 1965
30. Amendment of section 3 of Prescription Act, 1969
31. Amendment of section 216 of Companies Act, 1973
32. Amendment of section 218 of Companies Act, 1973

-
33. Amendment of section 1 of Rents Ordinance, 1977
 34. Repeal of section 13 of Boxing and Wrestling Control Act, 1980
 35. Amendment of section 2 of Combating of Immoral Practices Act, 1980
 36. Substitution of section 62 of Building Societies Act, 1986
 37. Amendment of section 32 of Close Corporations Act, 1988
 38. Short title and commencement

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Definitions

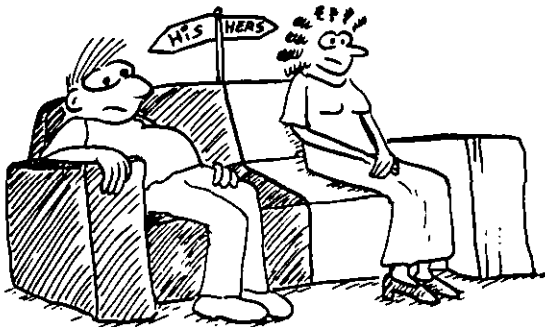
1. In this Act, unless the context indicates otherwise –

“bank” means any person carrying on a banking business as defined in the Banks Act, 1965 (Act 23 of 1965);

“court” means the High Court, and includes, for the purposes of section 10 and 11, a judge in chambers and, for the purposes of section 10, a magistrate’s court which has jurisdiction in the matter concerned;

“building society” means any person carrying on business as a building society as defined in the Building Societies Act, 1986 (Act 2 of 1986);

“joint estate” means the estate of a husband and wife married in community of property.



PART I
ABOLITION OF MARITAL POWER



Abolition of marital power

2. (1) Subject to the provisions of this Act with regard to the administration of a joint estate –

- (a) the common law rule in terms of which a husband acquires the marital power over the person and property of his wife is hereby repealed; and
- (b) the marital power which any husband had over the person and property of his wife immediately before the commencement of this Act, is hereby abolished.

(2) The abolition of the marital power by paragraph (b) of subsection (1) shall not affect the legal consequences of any act done or omission or fact existing before such abolition.

Effect of abolition of marital power

3. Subject to this Act, the effect of section 2(1) is –

- (a) to remove the restrictions which the marital power places on the legal capacity of a wife to contract and litigate, including, but not limited to, the restrictions on her capacity –

-
- (i) to register immovable property in her name;
 - (ii) to act as an executrix of a deceased estate;
 - (iii) to act as a trustee of an insolvent estate;
 - (iv) to act as a director of a company; and
 - (v) to bind herself as surety; and
- (b) that the common law position of the husband as head of the family is abolished, provided that nothing herein shall be construed to prevent a husband and wife from agreeing between themselves to assign to one of them, or both, any particular role or responsibility within the family.

PART II
PROVISIONS REGARDING MARRIAGES
IN COMMUNITY OF PROPERTY

Application on this Part

4. The provisions of this Part shall apply to every marriage in community of property, irrespective of the date on which such marriage was entered into.

Equal powers of spouses married in community of property

5. Subject to this Part, a husband and wife married in community of property have equal capacity –
- (a) to dispose of the assets of the joint estate;
 - (b) to contract debts for which the joint estate is liable; and
 - (c) to administer the joint estate.

Spouse's juristic acts generally not subject to other spouse's consent

6. Subject to section 7, a spouse married in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.

Acts requiring other spouse's consent



7. (1) Except in so far as permitted by subsection (4) and (5), and subject to sections 10 and 11, a spouse married in community of property shall not without the 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, stocks, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or 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, livestock, or any other assets forming part of the joint estate and held mainly as investments;



- (e) alienate, pledge, or otherwise burden any furniture or other effects of the common household forming part of the joint estate;
- (f) as a credit receiver enter into a credit agreement as defined in the Credit Agreements Act, 1980 (Act 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 Sale of Land on Instalments Act, 1971 (Act 72 of 1971), and to which the provisions of that Act apply;
- (h) bind himself or herself as surety;
- (i) 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 the other spouse's employment, profession, trade, business, or services rendered by him or her;
 - (ii) compensation for loss of any income contemplated in sub-paragraph (i);

-
- (iii) inheritance, legacy, donation, bursary or prize left, bequeathed, made or awarded to the other spouse;
 - (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; or
 - (vi) the proceeds of any insurance policy or annuity in favour of the other spouse; or
- (j) 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 contrary to any of the provisions of paragraph (a), (b), (c), (d) and (e).

(2) The consent required under subsection (1) for the performance of an act contemplated in that subsection may be given either orally or in writing, but the consent required for the performance of –

- (a) any such act which entails the registration, execution, or attestation of a deed or other document in a deed registry; or
- (b) an act contemplated in paragraph (h) of that subsection,

shall, in respect of each separate performance of such act, be given in writing only.

(3) The consent required for the performance of any act contemplated in paragraphs (b) to (j) of subsection (1), except where it is required for the registration, execution, or attestation of a deed or other document in a deeds registry, may also be given by way of ratification within a reasonable time after the performance of the act concerned.

(4) Notwithstanding subsection (1)(c), a spouse married in community of property may without the consent of the other spouse –

-
- (a) sell listed securities on a stock exchange and cede or pledge listed securities in order to buy other listed securities; or
 - (b) alienate, cede, or pledge –
 - (i) a deposit held in his or her name at a building society or bank; or
 - (ii) building society shares registered in his or her name.

(5) A spouse married in community of property may, in the ordinary course of his or her profession, trade, occupation, or business perform any of the acts referred to in paragraphs (b), (c), (f) and (g) of subsection (1), without the consent of the other spouse as required by that subsection.

(6) In determining whether a donation or alienation contemplated in subsection (1)(j) does or probably will 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 living and any other factor which in the opinion of the court should be taken into account.

Consequences of act performed without required consent

8. (1) If a spouse married in community of property enters into a transaction with another person without the consent required by the provisions of section 7, or without leave granted by a competent court in terms of section 10 or contrary to an order of a court in terms of section 11, and –

- (a) that other person does not know and cannot reasonably know that the transaction is being entered into without such consent or leave or in contravention of that order, as the case may be, such transaction shall be deemed to have been entered into with the required consent or leave 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 or she will probably not obtain such consent or leave 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 effected in favour of the other spouse –

- (i) upon division of the joint estate; or
- (ii) upon demand of the other spouse at any time during the subsistence of the marriage.

(2) In determining for the purposes of subsection (1)(b) whether or not a joint estate has suffered any loss as a result of te alienation of any property, regard shall be had not only to the economic value of the property in question but also to any sentimental replacement value which, at the time of alienation of that property, such property had to the spouse without whose consent the property was alienated.

(3) Where the amount of a loss determined for the purpose of subsection (1)(b) consists of, or includes, an amount representing –

- (a) the sentimental replacement value of any property as contemplated in subsection (2); or
- (b) the value of any asset being a personal effect of the spouse without whose consent such asset was alienated,

the amount representing that value shall upon the making of an adjustment be allocated in full for the benefit of the spouse without whose consent the property in question was alienated, and no deduction shall be allowed in respect of the other spouse by virtue of his or her interest in the joint estate.

(4) Where pursuant to a demand of a spouse in terms of subsection (1)(b)(ii) for an adjustment during the subsistence of a marriage an amount is determined to be payable to that spouse in settlement of such adjustment, the amount in question shall be recovered from the separate property, if any, of the other spouse, and only in so far as such other spouse has no separate property, from the joint estate: Provided that where an amount is recovered from the joint estate, there shall, upon a subsequent division of the joint estate, be allocated to the spouse to whom the payment was made, and as a

first charge against the value of the assets available for distribution, such an amount as that spouse may have contributed to the said adjustment by virtue of his or her interest in the joint estate.

(5) Any amount paid or asset transferred to a spouse during the subsistence of the marriage in settlement of an adjustment demanded by that spouse in terms of subsection (1)(b)(ii), and any proceeds derived therefrom, shall be the separate property of such spouse, but in the event of the sequestration of the joint estate such property and proceeds shall vest in the trustee of that insolvent estate as if the adjustment in question had not been effected.

(6) For the purposes of paragraph (b) of subsection (1), if it is proved in any civil proceedings that a spouse entered into a transaction without the consent required in terms of section 7(1), or leave granted in terms of section 10, it shall be presumed, unless the contrary is proved, that he or she knew that he or she would probably not obtain the consent or leave in question.

Litigation by or against spouses

9. (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 –

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

(2) A party to legal proceedings instituted or defended by 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 or her 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 recovered, that they be recovered from the joint estate, in which case the court may order that upon the division of the joint estate and adjustment shall be effected in favour of the other spouse.

(4) (a) An application for the surrender of a joint estate shall be made by both spouses.

(b) An application for the sequestration of a joint estate shall be made against both spouses: Provided that no application for the sequestration of the estate of a debtor shall be dismissed on the ground that such debtor's estate is a joint estate if the application satisfies the court that despite reasonable steps taken by him or her he or she was unable to establish whether the debtor is married in community of property or the name and address of the spouse of the debtor.

(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 necessaries for the joint household, the spouses may be sued jointly or severally therefor.

Power of court to dispense with spouse's consent with regard to specific juristic act.

10. If a spouse married in community of property withholds the consent required in terms of section 7 or 9 or if that consent cannot for any other reason be obtained, a court may on the application of the other spouse give that spouse leave to perform the act in question without the required consent if the court 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.

Power of court to suspend powers of spouse

11. A court may, on the application of a spouse, if it is satisfied that it is essential for the protection of the interest of that spouse in the joint estate, suspend for a definite or indefinite period any power that the other spouse may exercise in terms of this Part, either in general or in relation to a particular act as the court may specify in its order.

PART III PROVISIONS REGARDING DOMICILE OF MARRIED WOMEN AND DOMICILE AND GUARDIANSHIP OF MINOR CHILDREN



Domicile of married women

12. The domicile of a married woman shall not –
- by virtue only of the marriage; or
 - where applicable, by virtue only of the provisions of Article 41 of the Schedule to the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991),

be considered to be the same as that of her husband, but shall be ascertained by reference to the same factors as apply in the case of any other individual capable of acquiring a domicile of choice.

Domicile of minor children

13. (1) (a) The domicile of a child shall be the place with which that child is most closely connected.
- (b) If, in the normal course of events, a child resides with his or her parents or with one of them, it shall be presumed, unless the contrary is shown, that such child's domicile is where he or she so resides.
- (2) For the purposes of subsection (1).—

“child” means any person under the age of 18 years, excluding such a person who by law has attained the status of a major; and

“parents” includes the adoptive parents of a child and the parents of a child who are not married to each other.

Guardianship of minor children of a marriage

14. (1) Notwithstanding anything to the contrary contained in any law or the common law, but subject to any order of a competent court with regard to sole guardianship of a minor child or to any right, power, or duty which any other person has or does not have in respect of a minor child, the father and the mother shall have equal guardianship over a minor child, including an adopted child, of their marriage, and such guardianship shall,



subject to subsection (2), with respect to rights, powers and duties be equal to the guardianship which every guardian immediately before the commencement of this Act had under the common law in respect of his or her minor children.

(2) Where both the father and the mother have guardianship of a minor child, each one of them is competent, subject to any order of a competent court to the contrary, to exercise independently and without the consent of the other any right or power or to carry out any duty arising from such guardianship: Provided that, unless a competent court orders otherwise, the consent of both parents shall be necessary in respect of –

- (a) the contracting of a marriage by the minor child;
- (b) the adoption of the minor child;
- (c) the removal of the minor child from Namibia by either of the parents or any other person;
- (d) the application for the inclusion of the name of the minor child in the passport issued or to be issued to any one of the parents;
- (e) the alienation or encumbrance of immovable property or any right to immovable property vesting in the minor child.

PART IV

PROVISIONS REGARDING MARRIAGES OUT OF COMMUNITY OF PROPERTY

Liability of spouses married out of community of property for household necessities

15. (1) 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.

(2) Unless the parties agree otherwise, 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 or her financial means, and, in the case of a marriage subsisting at the commencement of this Act, a spouse shall, notwithstanding the provisions of section 3 of the Matrimonial Affairs Ordinance, 1955 (Ordinance 25 of 1955) which were in force immediately before the commencement of this Act, be deemed to have been so liable as from the beginning of such marriage.

(3) A spouse married out of community of property has a right of recourse against the other spouse in so far as he or she has contributed more in respect of necessaries for the joint household than for which he or she is liable in terms of subsection (2), and, in the case of a marriage subsisting at the date of commencement of this Act, such right of recourse is enforceable also with respect to the period of the marriage before the commencement of this Act, but without prejudice to the provisions of subsection (4).

(4) In any action commenced by the issue of process on or before the date of commencement of this Act, a claim based on the right of recourse conferred by the proviso to section 3 of the Matrimonial Affairs Ordinance, 1955, shall, notwithstanding the repeal of that section by this Act, not be affected by any provision of this section, and such claim shall be justifiable as if this Act had not been passed.

(5) This section shall not be construed as conferring on the husband a right to reclaim anything that he had already paid at the date of commencement of this Act in satisfaction of a right of recourse exercised by his wife by virtue of section 3 of the Matrimonial Affairs Ordinance, 1955, before the repeal of that Ordinance by this Act.

**PART V
MISCELLANEOUS AND
AMENDMENT OF CERTAIN LAWS**

Provisions not applicable to marriages by customary law

16. The provisions –
- (a) regarding the abolition of the marital power and the consequences of that abolition as set out in Part I;
 - (b) regarding marriages in community of property as set out in Part II; and
 - (c) regarding marriages out of community of property as set out in Part IV,



do not apply to marriages by customary law.

Amendment of section 1 of Matrimonial Causes Jurisdiction Act, 1939, as amended by section 6 of Act 37 of 1953 and section 21 of Act 70 of 1968

17. The following section is hereby substituted for section 1 of the Matrimonial Causes Jurisdiction Act, 1939:

Jurisdiction

1. (1) A court shall have jurisdiction in a divorce action if the parties are or either of the parties is –
- (a) domiciled in the area of jurisdiction of the court on the date on which the action is instituted; or
 - (b) ordinarily resident in the area of jurisdiction of the court on the said date and have or has been ordinarily resident in Namibia for a period of not less than one year immediately prior to that date.

(2) A court which has jurisdiction in terms of subsection (1) shall also have jurisdiction in respect of a claim in reconvention or a counter-application in the divorce action concerned.

(3) A court which has jurisdiction in terms of this section in a case where the parties are or either of the parties is not domiciled in Namibia shall determine any issue in accordance with the law which would have been applicable had the parties been domiciled in Namibia on the date on which the divorce action was instituted.

(4) The provisions of this Act shall not derogate from the jurisdiction which a court has in terms of any other law or the common law.

(5) For the purposes of this Act a divorce action shall be deemed to be instituted on the date on which the summons is issued or the notice of motion is filed or the notice is delivered in terms of the rules of court, as the case may be.”

Amendment of section 5 of Magistrates’ Courts Act, 1944

18. Section 5 of the Magistrates’ Courts Act, 1944 (Act 32 of 1944) is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The court may in any case, in the interest of good order or public morals, direct that a [civil] trial shall be held [with closed doors] in camera or that (with such exceptions as the court may direct) [females or] minors or other categories of persons or the public generally shall not be permitted to be present thereat.”

Amendment of section 111 of Magistrates’ Courts Act, 1944, as amended by section 10 of Act 63 of 1976

19. Section 111 of the Magistrates’ Courts Act, 1944, is hereby amended by the deletion of subsection (4).

Repeal of section 1, 2 and 3 of Matrimonial Affairs Ordinance, 1955

20. Sections 1, 2 and 3 of the Matrimonial Affairs Ordinance, 1955 (Ordinance 25 of 1955), are hereby repealed.

Amendment of section 4 of Matrimonial Affairs Ordinance, 1955, as amended by section 3 of Ordinance 9 of 1967

21. Section 4 of the Matrimonial Affairs Ordinance, 1955, is hereby amended –

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The High Court [**of South West Africa**] of Namibia or any judge thereof may –”;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) Subject to any order of court –

- (a) a parent to whom the sole guardianship or custody of a minor has been granted under subsection (1) or a father or mother upon whom a children’s court has under section **[58(1) of the Children’s Ordinance, 1961 (Ordinance 31 of 1961)]** 60 of the Children’s Act, 1960 (Act 33 of 1960), conferred the exclusive right to exercise any parental powers in regard to a minor, may by testamentary disposition appoint any person to be the sole guardian or to be vested with the sole custody of the minor, as the case may be; and

- (b) the [**father**] parent of a minor to whom the sole guardianship of the minor has not been granted under subsection (1) or upon whom a children’s court has not conferred the exclusive right to exercise any parental powers in regard to a minor shall not be entitled by testamentary disposition to appoint any person as the guardian of the minor [**in any other manner than to act jointly with the mother**] unless such parent was the sole natural guardian immediately before his or her death.”;

-
- (c) by the deletion of subsection (4);
- (d) by the substitution for subsection (5) of the following subsection:
- “(5) The court or a judge may, where a parent has appointed a guardian or custodian as provided in paragraph (a) of subsection (3), upon application of the other parent or such guardian, made after the death of the testator or testatrix, make such order in regard to the guardianship or custody of the minor as the court or judge may deem in the interest of the minor.”;
- (e) by the substitution for subsection (6) of the following subsection:
- “(6) If an order under section [58 of the Children’s Ordinance, 1961,] 60 of the Children’s Act, 1960, is rescinded, or if an order under subsection (1) of this section granting the sole guardianship or custody of a minor to a parent lapses or is rescinded or is varied in such a manner that the parent is not longer the sole guardian or vested with the sole custody of the minor, any disposition made under subsection (3)(a) shall lapse.”; and
- (f) by the deletion of subsection (7).

Amendment of First Schedule to Defence Act, 1957

22. Section 78 of the First Schedule to the Defence Act, 1957 (Act 44 of 1957), is hereby amended by the substitution for subsection (3) of the following subsection:

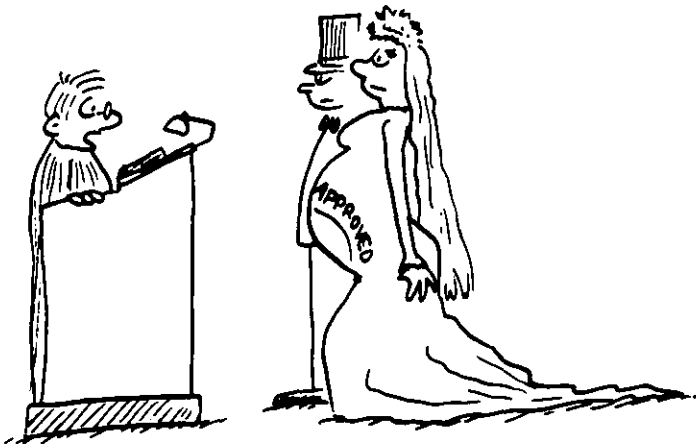
“(3) Whenever it appears to a convening authority or a court martial that, in the interests of good order or public morals or the administration of justice or for reasons of security, a trial ought not to be conducted or continued in open court, the convening authority of the court martial may at any time either before the commencement or during the course of the trial, order that persons other than the accused, his or her counsel and the necessary court officials, or [**females,**] that juveniles or other [**classes**] categories of persons shall not be permitted to be present at the trial.”

Amendment of section 1 of Marriage Act, 1961, as amended by section 1 of Act 51 of 1970 and section 1 of Act 5 of 1987

23. Section 1 of the Marriage Act, 1961 (Act 25 of 1961), is hereby amended by the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Home Affairs;"

Amendment of section 26 of Marriage Act, 1961, as substituted by section 6 of Act 5 of 1987



24. Section 26 of the Marriage Act, 1961, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No boy or girl under the age of 18 years [and no girl under the age of 15 years] shall be capable of contracting a valid marriage except with the written permission of the [Cabinet] Minister or any [officer] staff member in the [Government Service] Public Service authorized thereto by the [Cabinet] Minister, which [it or] he or she may grant in any particular case in which [it or] he or she considers such marriage desirable: Provided that such permission shall not relieve the parties to the proposed marriage from the obligation to

comply with all other requirements prescribed by law: Provided further that such permission shall not be necessary if by reason of any such other requirement the consent of a judge or court having jurisdiction in the matter is necessary and has been granted.”

Substitution of certain expression in Marriage Act, 1961

25. The Marriage Act, 1961, is hereby amended by the substitution for the expression “Cabinet”, wherever it occurs, of the expression “Minister”.

Substitution of section 23 of Banks Act, 1965, as inserted by section 49 of Act 99 of 1980

26. Section 23 of the Banks Act, 1965 (Act 23 of 1965), is hereby substituted for the following section:

“Minors

23. Notwithstanding anything to the contrary contained in any law, a minor over the age of sixteen years may be a depositor with a banking institution and may without the consent or assistance of his or her guardian execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against and generally deal with his or her deposit as he or she thinks fit and shall enjoy all the privileges and be liable to all the obligations attaching to depositors.”

Repeal of section 17 of Administration of Estates Act, 1965

27. Section 17 of the Administration of Estates Act, 1965 (Act 66 of 1965), is hereby repealed.

Amendment of section 72 of Administration of Estates Act, 1965, as amended by section 7 of Act 54 of 1970

28. Section 72 of the Administration of Estates Act, 1965, is hereby amended –

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Master shall, subject to the provisions of subsection (3) and to any applicable provision of [section 5 of the Matrimonial Affairs Act, 1953 (Act No. 37 of 1953), and] section 4 of the Matrimonial Affairs Ordinance, 1955 (Ordinance No. 25 of 1955), [of the territory,] or any order of court made under any such provision, on the written application of any person –”; and

(b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) who has been nominated by will or written instrument –

(i) by the parent to whom sole guardianship of a minor has been granted under subsection (1) of the said section 4 or on whom the exclusive right to exercise parental powers in regard to a minor has been conferred under section 60 of the Children’s Act, 1960 (Act 33 of 1960); or

(ii) by the mother of an illegitimate minor who has not been so deprived of the guardianship of such minor or of her parental powers over him or her,

to administer the property of such minor and to take care of his or her person as tutor, or to take care of or administered his or her property as curator; or”.

Substitution of section 85 of Administration of Estates Act, 1965

29. The following section is hereby substituted for section 85 of the Administration of Estates Act, 1965:

“Applications of certain sections to tutors and curators

85. Sections 24, 26, 28, 36, 42(2), 46, 48, 49(2), 52, 53, 54 and 56 shall *mutatis mutandis* apply with reference to tutors and curators: Provided that any reference in any of the said sections to a will shall, for the purposes of its application under this section, include a reference to any written instrument by which the tutor or curator concerned has been nominated.”

Amendment of section 3 of Prescription Act, 1969

30. Section 3 of the Prescription Act, 1969 (Act 68 of 1969), is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) the person against whom the prescription is running is a minor or is insane, [or is a woman whose separate property is controlled by her husband by virtue of his marital power,] or is a person under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section 4; or”.

Amendment of section 216 of Companies Act, 1973, as substituted by section 15 of Act 59 of 1978

31. Section 216 of the Companies Act, 1973 (Act 61 of 1973), is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) In respect of any of the matters referred to in section 211(1) the return referred to in subsection (2) shall contain a statement, signed by a director, a secretary who is a body corporate or an officer of the company, that –

- (a) the consent, referred to in section 211, of the director or officer in respect of whom particulars are reflected in such return, has been obtained on a duly completed and signed prescribed form; and
- (b) any person appointed as director or officer of the company, is not disqualified under section 218 or 219; [and
- (c) the written consent under section 218(1)(b) of the husband of any woman appointed as a director of the company has been obtained on the prescribed form].”

Amendment of section 218 of the Companies Act, 1973, as amended by section 17 of Act 59 of 1978

32. Section 218 of the Companies Act, 1973, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“lessee”, with regard to –

- (a) a business premises, includes the widower or widow of a lessee who rented the premises in his or her personal capacity, if such widower or widow, as the case may be, was living with the lessee at the time of the lessee’s death and, unless the lease agreement expressly or by necessary implication prohibits sublease, cession or assignment by the lessee, a sublessee, cessionary or assignee of the lessee; and
- (b) a dwelling, includes a sublessee and he widower or widow or deserted spouse of a lessee or sublessee who was living with him or her at the time of his or her death or desertion and is desirous of a continued occupation of the dwelling;”

Repeal of section 13 of Boxing and Wrestling Control Act, 1980

34. Section 13 of the Boxing and Wrestling Control Act, 1980 (Act 11 of 1980), is hereby repealed.

Amendment of section 2 of Combating of Immoral Practices Act, 1980

35. Section 2 of the Combating of Immoral Practices Act, 1980 (Act 21 of 1980), is hereby amended by the substitution for paragraph (g) of subsection (2) of the following paragraph:

“(g) any person whose [wife] spouse keeps or lives in or manages or assists in the management of a brothel, unless [he] such person proves that he or she was ignorant thereof or that he or she lives apart from [her] the said spouse and did not receive all the money or any share of the money taken therein.”

Substitution of section 62 of Building Societies Act, 1986

36. The following section is hereby substituted for section 62 of the Building Societies Act, 1986 (Act 2 of 1986):

“Minors

62. Unless otherwise provided by the rules of the society, a minor over the age of sixteen years may be a member of or depositor with any society and may without the consent or assistance of his or her guardian execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against and generally deal with his or her share or deposit as he or she thinks fit, and shall enjoy all the privileges (except that a minor shall not hold office) and be liable to all the obligations attaching to members or depositors.”

Amendment of section 32 of Close Corporations Act, 1988

37. Section 32 of the Close Corporations Act, 1988 (Act 26 of 1988), is hereby amended by the deletion of subsection (2).

Short title and commencement

38. This Act shall be called the Married Persons Equality Act, 1996, and shall come into operation on a date to be determined by the Minister of Justice by notice in the *Gazette*.

