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**CHAPTER 51**

**MATRIMONIAL CAUSES**

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(\* See Legal Notice No. 135 of 1971.),  
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**AN ACT TO MAKE BETTER PROVISION RELATING TO MARRIAGE AND TO  
DIVORCE AND MATRIMONIAL CAUSES AND IN RELATION THERETO, PARENTAL  
RIGHTS AND THE CUSTODY AND GUARDIANSHIP OF CHILDREN**

[3 October 1969]

**PART I - PRELIMINARY**

**Short title**

1. This Act may be cited as the Matrimonial Causes Act.

**Interpretation**

2. (1) In this Act, unless the contrary intention appears-

"adopted", in relation to a child, means adopted under the law of any place (whether in or out of Fiji) relating to the adoption of children;

"appeal" includes an application for rehearing;

"crime" means an offence punishable by imprisonment;

"cross-petition" includes an answer in which the respondent to a petition seeks a decree or declaration of a kind referred to in paragraph (a) or (b) of the definition of "matrimonial cause" in this subsection;

"decree" means decree, judgment or order, and includes a decree *nisi* and an order dismissing a petition or application or refusing to make a decree or order;

"magistrate's court" means a court established under the provisions of the Magistrates' Courts Act or, where proceedings are instituted in Rotuma, the District Officer's Court; and "magistrate" shall have a corresponding meaning.

*(Cap. 14)*

"matrimonial cause" means-

(a) proceedings for a decree of-

- (i) dissolution of marriage;
- (ii) nullity of marriage;
- (iii) judicial separation;
- (iv) restitution of conjugal rights; or
- (v) jactitation of marriage;

(b) proceedings for a declaration of the validity of the dissolution or annulment of a marriage by a decree or otherwise or of a decree of judicial separation, or for a declaration of the continued operation of a decree of judicial separation, or for an order discharging a decree of judicial separation;

(c) proceedings with respect to the maintenance of a party to the proceedings, settlements, damages in respect of adultery, the custody or guardianship of children of the marriage or the maintenance, welfare, advancement or education of children of the marriage, being proceedings in relation to concurrent, pending or completed proceedings of a kind referred to in either of paragraphs (a) or (b), including proceedings of such a kind pending at, or completed before, the commencement of this Act;

(d) any other proceedings (including proceedings with respect to the enforcement of a decree, the service of process or costs) in relation to concurrent, pending or completed proceedings of a kind referred to in any of paragraphs (a), (b) or (c), including proceedings of such a kind pending at, or completed before, the commencement of this Act; or

(e) proceedings seeking leave to institute proceedings for a decree of dissolution of marriage or of judicial separation, or proceedings in relation to proceedings seeking such leave;

"petition" includes a cross-petition;

"petitioner" includes a cross-petitioner;

"proceedings" includes cross-proceedings;

"respondent" includes a petitioner against whom there is a cross-petition;

"the rules" means the rules made under the provisions of section 110 of this Act;

"welfare officer" means any Senior Welfare Officer, Welfare Officer or Assistant Welfare Officer employed in the public service.

*(Amended by Act 6 of 1982, s. 2.)*

(2) For the purposes of this Act, the date of a petition shall be taken to be the date on which the petition was filed in a court having jurisdiction under this Act.

### **Certain children to be deemed to be children of the marriage**

3. (1) For the purposes of the application of this Act in relation to a marriage-

(a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;

(b) a child of the husband and wife born before the marriage, whether legitimated by the marriage or not; and

(c) a child of either the husband or wife (including an illegitimate child of either of them and a child adopted by either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife and accepted by both as a member of the family shall be deemed to be a child of the marriage, and a child of the husband and wife (including a child born before the marriage, whether legitimated by the marriage or not) who has been adopted by another person or other persons shall be deemed not to be a child of the marriage.

(2) For the purposes of subsection (1), in relation to any proceedings the relevant time is-

(a) the time immediately preceding the time when the husband and wife ceased to live together or, if they have ceased on more than one occasion to live together, the time immediately preceding the time when they last ceased to live together before the institution of the proceedings; or

(b) if the husband and wife were living together at the time when the proceedings were instituted, the time immediately preceding the institution of the proceedings.

(3) The provisions of the subsections (1) and (2) shall apply in relation to a purported marriage that is void as if the purported marriage were a marriage.

## **PART II - RECONCILIATION**

### **Reconciliation**

4. (1) It is the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so), and if at any time it appears to the court, either from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel, that there is a reasonable possibility of such a reconciliation, the court may do either or both of the following-

(a) adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with paragraph (b);

(b) nominate-

(i) a welfare officer with experience or training in marriage conciliation; or

(ii) some other suitable person to endeavour, with the consent of the parties, to effect a reconciliation.

(2) If, not less than 14 days after an adjournment under subsection (1) has taken place, either of the parties to the marriage requests that the hearing be proceeded with, the court shall resume the hearing.

*(Amended by Act 6 of 1982, s. 3.)*

### **Statements, etc., made in attempt to effect reconciliation**

5. Evidence of anything said or of any admission made in the course of an endeavour to effect a reconciliation under this Part is not admissible in any court or in proceedings before a person authorized by law, or by consent of the parties, to hear receive and examine evidence.

## **PART III - VOID AND VOIDABLE MARRIAGES**

### **Void marriages**

6. Subject to section 8, a marriage that takes place after the commencement of this Act is void where-

- (a) either of the parties is, at the time of the marriage, lawfully married to some other person;
- (b) the parties are within the prohibited degrees of consanguinity or affinity:
- (c) the marriage is not a valid marriage under the law of the place where the marriage takes place, by reason of a failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages;
- (d) the consent of either of the parties is not a real consent because-
  - (i) it was obtained by duress or fraud; or
  - (ii) that party is mistaken as to the identity of the other party, or as to the nature of the ceremony performed; or
  - (iii) that party is mentally incapable of understanding the nature of the marriage contract; or
- (e) either of the parties is not of marriageable age,

and not otherwise.

### **Prohibited degrees**

7. After the commencement of this Act the prohibited degrees of consanguinity and affinity respectively are those set out in the First Schedule and none other.

*(Amended by Act 6 of 1982, s. 4.)*

### **Marriage of persons within prohibited degrees of affinity**

8. (1) Where 2 persons who are within the prohibited degrees of affinity wish to marry one another they may apply to a judge for permission to do so.

(2) If the judge is satisfied that the circumstances of the particular case are so exceptional as to justify the granting of the permission sought, he may, by order, permit the applicants to marry one another.

(3) Where persons marry in pursuance of permission granted under this section, the validity of their marriage is not affected by the fact that they are within the prohibited degrees of affinity.

### **Voidable marriages**

9. (1) Subject to this Act, a marriage that takes place after the commencement of this Act, not being a marriage that is void, is voidable, where at the time of the marriage-

(a) either party to the marriage is incapable of consummating the marriage;

(b) either party to the marriage is-

(i) of unsound mind; or

(ii) a mental defective;

(c) either party to the marriage is suffering from a venereal disease in a communicable form; or

(d) the wife is pregnant by a person other than the husband,

and not otherwise.

(2) For the purposes of this section "mental defective" means a person who, owing to an arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, requires oversight, care or control for his own protection, or for the protection of others and is, by reason of that fact unfitted for the responsibilities of marriage.

### **Validity, etc., of certain marriages not affected**

10. (1) The validity or invalidity of any marriage that took place before the commencement of this Act shall be governed by the law in force immediately prior to such commencement and shall not be affected by anything contained in this Part.

(2) The provisions of this Act shall not affect the validity or invalidity of a marriage where it would not be in accordance with the common law rules of private international law to apply them to that marriage.

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## **PART IV - JURISDICTION**

### **Jurisdiction in matrimonial causes**

11. (1) Subject to the provisions of this Act, a person may-

(a) institute in the Supreme Court any matrimonial cause under this Act;

(b) institute in a magistrate's court, other than the District Officer's Court, Rotuma, any matrimonial cause, except-

(i) proceedings for a decree of nullity of marriage, restitution of conjugal rights or jactitation of marriage;

(ii) proceedings of a kind referred to in paragraph (b) or paragraph (e) of the definition of "matrimonial cause" in subsection (1) of section 2; and



(iii) without the leave of the Supreme Court, any proceedings of a kind referred to in paragraph (c) or paragraph (d) of that definition which are proceedings in relation to proceedings instituted in the Supreme Court before or after the 14th day of February 1983\*;

(\**The Matrimonial Causes (Amendment) Act, 1982 came into operation on 14th February 1983. See Legal Notice No. 142 of 1982.*)

(c) institute in the District Officer's Court, Rotuma, proceedings only for dissolution of marriage or for judicial separation under this Act.

*(Substituted by Act 6 of 1982, s. 5.)*

(2) Proceedings for a decree of dissolution of marriage or for a decree of nullity of a voidable marriage shall not be instituted under this Act except by a person domiciled in Fiji.

(3) Proceedings for a decree of nullity of a void marriage or for a decree of judicial separation, restitution of conjugal rights or jactitation of marriage shall not be instituted under this Act except by a person domiciled or resident in Fiji.

#### **Special provisions as to wife's domicile**

12. (1) For the purposes of this Act, a deserted wife who was domiciled in Fiji either immediately before her marriage or immediately before the desertion shall be deemed to be domiciled in Fiji.

(2) For the purposes of this Act, a wife who is resident in Fiji at the date of instituting proceedings under this Act and has been so resident for the period of 3 years immediately preceding that date shall be deemed to be domiciled in Fiji at that date.

#### **Law to be applied**

13. Where it would be in accordance with the common law rules of private international law to apply the laws of any country or place, the court shall apply the laws of that country or place.

*(Amended by Act 6 of 1982, s. 6.)*

### **PART V - DISSOLUTION OF MARRIAGE**

#### **Grounds for dissolution of marriage**

14. Subject to this Part, a petition under this Act by a party to a marriage for a decree of dissolution of marriage may be based on one or more of the following grounds:-

(a) that, since the marriage, the other party to the marriage has committed adultery;

(b) that, since the marriage, the other party to the marriage has without just cause or excuse, wilfully deserted the petitioner for a period of not less than 2 years;

(c) that the other party to the marriage has wilfully and persistently refused to consummate the marriage;

(d) that, since the marriage, the other party to the marriage has habitually been guilty of cruelty to the petitioner;

(e) that, since the marriage, the other party to the marriage has committed

rape, sodomy or bestiality;

(f) that, since the marriage, the other party to the marriage has, for a period of not less than 2 years-

(i) been a habitual drunkard; or

(ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation,

or has, for a part or parts of such a period, been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated;

(g) that, since the marriage, the petitioner's husband has within a period not exceeding 5 years-

(i) suffered frequent convictions for crime in respect of which he has been sentenced in the aggregate to imprisonment for not less than 3 years; and

(ii) habitually left the petitioner without reasonable means of support;

(h) that, since the marriage, the other party to the marriage has been in prison for a period of not less than 3 years after conviction for an offence punishable by death or imprisonment for life or for a period of 5 years or more, and is still in prison at the date of the petition;

(i) that, since the marriage and within a period of one year immediately preceding the date of the petition, the other party to the marriage has been convicted of-

(i) having attempted to murder or unlawfully to kill the petitioner; or

(ii) having committed an offence involving the intentional and deliberate infliction of grievous bodily harm on the petitioner;

(j) that the other party to the marriage has habitually and wilfully failed, throughout the entire period of 2 years immediately preceding the date of the petition, to pay maintenance for the petitioner-

(i) ordered to be paid under an order of a court; or

(ii) agreed to be paid under an agreement between the parties to the marriage providing for their separation;  
(Amended by Act 6 of 1982, s. 7.)

(k) that the other party to the marriage has, for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under this Act;

(l) that the other party to the marriage-

(i) is, at the date of the petition, of unsound mind and unlikely to recover; and

(ii) since the marriage and within the period of 6 years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating not less than 5 years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution;

(m) that the parties to the marriage have separated and have lived separately and apart for a continuous period of not less than 5 years immediately preceding the date of the petition, and there is no reasonable likelihood of cohabitation being resumed;

(n) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

### **Constructive desertion**

15. A married person whose conduct constitutes just cause or excuse for the other party to the marriage to live separately or apart, and occasions that other party to live separately or apart, shall be deemed to have wilfully deserted that other party without just cause or excuse, notwithstanding that that person may not in fact have intended the conduct to occasion that other party to live separately or apart.

### **Refusal to resume cohabitation**

16. (1) Where husband and wife are parties to an agreement for separation, whether oral, in writing or constituted by conduct, the refusal by one of them, without reasonable justification, to comply with the other's *bona fide* request to resume cohabitation constitutes, as from the date of the refusal, wilful desertion without just cause or excuse on the part of the party so refusing.

(2) For the purposes of subsection (1), "reasonable justification" means reasonable justification in all the circumstances, including the conduct of the other party to the marriage since the marriage, whether that conduct took place before or after the agreement for separation.

### **Desertion continuing after insanity**

17. Where a party to a marriage has been wilfully deserted by the other party, the desertion shall not be deemed to have been terminated by reason only that the deserting party has become incapable of forming or having an intention to continue the desertion, if it appears to the court that the desertion would probably have continued if the deserting party had not become so incapable.

### **Restriction on dissolution of marriage on ground of wilful refusal to consummate**

18. A decree of dissolution of marriage shall not be made upon the ground specified in paragraph (c) of section 14 unless the court is satisfied that, as at the commencement of the hearing of the petition, the marriage had not been consummated.

*(Amended by Act 6 of 1982, s. 8.)*

### **Aggregation of concurrent sentences**

19. Where-

(a) a person has been sentenced to imprisonment in respect of each of 2 or more crimes that, in the opinion of the court, arose substantially out of the same acts or omissions; and

(b) the sentences were ordered to be served, in whole or in part, concurrently,

then, in reckoning for the purposes of paragraph (g) of section 14 the period for which that person has been sentenced in the aggregate, any period during which 2 or more of those sentences were to be served concurrently shall be taken into account once only.

*(Amended by Act 6 of 1982, s. 9.)*

#### **Restriction on dissolution of marriage on ground of failure to pay maintenance**

20. A decree of dissolution of marriage shall not be made upon the ground specified in paragraph (j) of section 14 unless the court is satisfied that reasonable attempts have been made by the petitioner to enforce the order or agreement under which the maintenance was ordered or agreed to be paid.

*(Amended by Act 6 of 1982, s. 10.)*

#### **Restriction on dissolution of marriage on ground of insanity**

21. A decree of dissolution of marriage shall not be made upon the ground specified in paragraph (l) of section 14 unless the court is satisfied that, at the commencement of the hearing of the petition, the respondent was still confined in an institution referred to in that paragraph and was unlikely to recover.

*(Amended by Act 6 of 1982, s. 11.)*

#### **Provisions relating to ground of separation**

22. (1) For the purposes of paragraph (m) of section 14, the parties to a marriage may be taken to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties, whether constituting desertion or not.

(2) A decree of dissolution of marriage may be made upon the ground specified in paragraph (m) of section 14 notwithstanding that there was in existence at any relevant time-

(a) a decree or order of a court suspending the obligation of the parties to the marriage to cohabit; or

(b) an agreement between those parties for separation.

*(Amended by Act 6 of 1982, s. 12.)*

#### **Court to refuse to make decree on ground of separation in certain circumstances**

23. (1) Where, on the hearing of a petition for a decree of dissolution of marriage on the ground specified in paragraph (m) of section 14 (in this section referred to as "the ground of separation"), the court is satisfied that, by reason of the conduct of the petitioner, whether before or after the separation commenced, or for any other reason, it would, in the particular circumstances of the case, be harsh, and oppressive to the respondent, or contrary to the public interest, to grant a decree on that ground on the petition of the petitioner, the court shall refuse to make the decree sought.

(2) Where in proceedings for a decree of dissolution of marriage on the ground of separation, the court is of opinion that it is just and proper in the circumstances of the case that the petitioner should make provision for the maintenance of the respondent or should make any other provision for the benefit of the respondent, whether by way of settlement of property or otherwise, the court shall not make a decree on that ground in favour of the petitioner until the petitioner has made arrangements to the satisfaction of the court to provide the maintenance or other benefits upon the decree becoming absolute.

(3) The court may, in its discretion, refuse to make a decree of dissolution of marriage on the ground of separation if the petitioner has, whether before or after the separation commenced, committed adultery that has not been condoned by the respondent or, having been so condoned has been revived.

(4) Where petitions by both parties to a marriage for the dissolution of the marriage are before the court, the court shall not, upon either of the petitions, make a decree on the ground of separation if it is able properly to make a decree upon the other petition on any other ground.

*(Amended by Act 6 of 1982. s. 13.)*

#### **Provision relating to presumption of death**

24. (1) Where proceedings are brought upon the ground specified in paragraph (n) of section 14, proof that, for a period of 7 years immediately preceding the date of the petition, the other party to the marriage was continually absent from the petitioner and that the petitioner has no reason to believe that the other party was alive at any time within that period is sufficient to establish the ground of the petition unless it is shown that the other party to the marriage was alive at a time within that period.

(2) A decree upon the ground specified in paragraph (n) of section 14 shall be in the form of a decree of dissolution of marriage by reason of presumption of death.

#### **Condonation or connivance to be an absolute bar to relief**

25. (1) A decree of dissolution of marriage shall not be made upon a ground specified in any of paragraphs (a) to (k), inclusive, of section 14 if-

(a) the petitioner has condoned the ground and the ground has not been revived; or

(b) the petitioner has connived at the ground.

(2) For the purposes of this section and of any provision of this Act referring to condonation, any presumption of condonation that arises from the continuance or resumption of sexual intercourse may be rebutted on the part of a husband, as well as on the part of a wife, by evidence sufficient to negative intent to condone.

#### **Collusion to be a bar**

26. The court may, in its discretion, refuse to make a decree of dissolution of marriage if the petitioner, in bringing or prosecuting the proceedings, has been guilty of collusion.

*(Amended by Act 6 of 1982. s. 14.)*

#### **Discretionary bars**

27. The court may, in its discretion, refuse to make a decree of dissolution of marriage upon a ground specified in any of paragraphs (a) to (l) inclusive, of section 14, if, since the marriage-

(a) the petitioner has committed adultery that has not been condoned by the respondent or, having been so condoned, has been revived;

(b) the petitioner has been guilty of cruelty to the respondent;

(c) the petitioner has wilfully deserted the respondent before the happening of the matters constituting the ground relied upon by the petitioner or, where that ground involves matters occurring during, or extending over a period, before the expiration of that period; or

(d) the habits of the petitioner have, or the conduct of the petitioner has,

conducted or contributed to the existence of the ground relied upon by the petitioner.  
(Amended by Act 6 of 1982, s. 15.)

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### **Effect of cohabitation with a view to reconciliation**

28. (1) For the purposes of section 27 and of subsection (3) of section 23 adultery of the petitioner shall not be deemed to have been condoned, and for the purposes of section 25, a ground shall not be deemed to have been condoned, by reason only of a continuation or resumption of cohabitation between the parties (whether with or without acts of sexual intercourse between them) for one period not exceeding 3 months if the court is satisfied that-

(a) the cohabitation was continued or resumed, as the case may be, with a view, on the part of the party to whom condonation might otherwise be attributed, to effecting a reconciliation; and

(b) a reconciliation was not effected during that period.

(2) For the purposes of proceedings on the ground specified in paragraph (b) of section 14, where-

(a) before the desertion had continued for 2 years, the parties, on one occasion, resumed cohabitation (whether with or without acts of sexual intercourse between them), but the deserting party, within a period of 3 months after resumption of cohabitation, again, without just cause or excuse, wilfully deserted the other party, and

(b) the court is satisfied that-

(i) the resumption of cohabitation was with a view, on the part of the deserted party, to effecting a reconciliation; and

(ii) a reconciliation was not effected during the period of cohabitation,

the periods of desertion before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of desertion.

(3) For the purposes of proceedings on the ground specified in paragraph (m) of section 14, where-

(a) since the separation, the parties on one occasion, resumed cohabitation (whether with or without acts of sexual intercourse between them) but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart to the date of the petition; and

(b) the court is satisfied that-

(i) the resumption of cohabitation was with a view, on the part of either party, to effecting a reconciliation, and

(ii) a reconciliation was not effected during the period of cohabitation, the periods of living separately and apart before

and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of living separately and apart.

(4) For the purposes of the preceding provisions of this section, a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

(5) The operation of this section extends to things that occurred before the commencement of this section.

### **Restriction on dissolution of marriage where petition for decree of nullity of the marriage is before the Supreme Court**

29. Where a petition for a decree of nullity of any marriage is before the Supreme Court, the Supreme Court or a magistrate's court shall not make a decree of dissolution of that marriage unless the Supreme Court has dismissed the petition for a decree of nullity of that marriage.

*(Substituted by Act 6 of 1982, s. 16.)*

### **Petition within three years of marriage**

30. (1) Subject to this section, proceedings for a decree of dissolution of marriage shall not be instituted within 3 years after the date of the marriage except in, and by leave of, the Supreme Court.

*(Amended by Act 6 of 1982, s. 17.)*

(2) Nothing in this section shall be taken to require the leave of the Supreme Court to the institution of proceedings for a decree of dissolution of marriage on one or more of the grounds specified in paragraphs (a), (c) and (e) of section 14, and on no other ground, or to the institution of proceedings for a decree of dissolution of marriage by way of cross proceedings.

*(Amended by Act 6 of 1982, s. 17)*

(3) The Supreme Court shall not grant leave under this section to institute proceedings except on the ground that to refuse to grant that leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage.

*(Amended by Act 6 of 1982, s. 17.)*

(4) In determining an application for leave to institute proceedings under this section, the Supreme Court shall have regard to the interests of any children of the marriage and to the question whether there is any reasonable probability of a reconciliation between the parties before the expiration of the period of 3 years after the date of the marriage.

*(Amended by Act 6 of 1982, s. 17.)*

(5) *(Repealed by Act 6 of 1982, s. 17.)*

(6) Where, at the hearing of proceedings that have been instituted by leave of the Supreme Court under this section, the Supreme Court is satisfied that the leave was obtained by misrepresentation or concealment of material facts, the Supreme Court may-

(a) adjourn the hearing for such period as the Supreme Court thinks fit; or

(b) dismiss the petition on the ground that the leave was so obtained.

*(Amended by Act 6 of 1982, s. 17.)*

(7) Where, in a case to which subsection (6) applies, there is a cross-petition, if the Supreme Court adjourns or dismisses the petition under that subsection, it shall also adjourn for the same period, or dismiss, as the case may be, the cross-petition but if the Supreme Court, having regard to the

provisions of this section, thinks it proper to proceed to hear and determine the cross-petition it may do so, and in that case it shall also proceed to hear and determine the petition.

*(Amended by Act 6 of 1982, s. 17.)*

(8) The dismissal of a petition or a cross-petition under subsection (6) or (7) does not prejudice any subsequent proceedings on the same, or substantially the same, facts as those constituting the ground on which the dismissed petition or cross-petition was brought.

(9) Nothing in this section prevents the institution of proceedings after the period of 3 years from the date of the marriage, based upon matters which have occurred within that period.

(10) In this section, a reference to the leave of the Supreme Court shall be deemed to include a reference to leave granted by the Court of Appeal.

*(Amended by Act 6 of 1982, s. 17.)*

### **Claim for damages**

31. (1) A party to a marriage, whether husband or wife, may, in a petition for a decree of dissolution of the marriage on the ground that the other party to the marriage has committed adultery with a person, or on grounds including that ground, claim damages from that person on the ground that that person has committed adultery with the other party to the marriage and, subject to this section, the court may award damages accordingly.

*(Amended by Act 6 of 1982, s. 18.)*

(2) Damages shall not be awarded against a person where the adultery of the respondent with that person has been condoned, whether subsequently revived or not, or if a decree of dissolution of the marriage on the ground of the adultery of the respondent with that person, or on grounds including that ground, is not made.

(3) Damages shall not be awarded under this Act in respect of an act of adultery committed more than 3 years before the date of the petition.

(4) The court may direct in what manner the damages awarded shall be paid or applied and may, if it thinks fit, direct that they shall be settled for the benefit of the respondent or the children of the marriage.

*(Amended by Act 6 of 1982, s. 18.)*

(5) No action for criminal conversation shall lie whether under this Act or otherwise.

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### **Joinder of adulterer, etc.**

32. (1) Where, in a petition for a decree of dissolution of marriage or in an answer to such a petition a party to the marriage is alleged to have committed adultery with a specified person, whether or not a decree of dissolution of marriage is sought on the grounds of the adultery, that person shall, except as provided by the rules, be made a party to the proceedings.

(2) Where, in a petition for a decree of dissolution of marriage or in an answer to such a petition, a party to the marriage is alleged to have committed rape or sodomy on or with a specified person, whether or not a decree of dissolution of marriage is sought on the ground of the rape or sodomy, that person shall, except as provided by the rules, be served with notice that the allegation has been made and is thereupon entitled to intervene in the proceedings.

(3) Where a person has been made a party to proceedings for a decree of dissolution of marriage in pursuance of subsection (1), the Supreme Court, may, on the application of that person, after the close of the case for the party to the marriage who alleged the adultery, if it is satisfied that there is not sufficient evidence to establish that that person committed adultery with the other party to the marriage, dismiss that person from the proceedings.

*(Amended by Act 6 of 1982, s. 19.)*



## **Re-marriage**

33. Where a decree of dissolution of marriage under this Act has become absolute, a party to the marriage may marry again as if the marriage had been dissolved by death.

## **PART VI - NULLITY OF MARRIAGE**

### **Ground for decree of nullity of marriage**

34. Subject to this Part, a petition under this Act for a decree of nullity of marriage may be based on the ground that the marriage is void or on the ground that the marriage is voidable at the suit of the petitioner.

### **Who may institute proceedings**

35. A decree of nullity of marriage shall not be made-

(a) on the ground that the marriage is voidable by virtue of paragraph (a) of subsection (1) of section 9 upon the petition of the party suffering from the incapacity to consummate the marriage, unless that party was not aware of the existence of the incapacity at the time of the marriage;

(b) on the ground that the marriage is voidable by virtue of paragraph (b) or (c) of subsection (1), of that section upon the petition of the party suffering from the disability or disease; or

(c) on the ground that the marriage is voidable by virtue of paragraph (d) of subsection (1) of that section, upon the petition of the wife.

### **Incapacity to consummate marriage**

36. (1) A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of paragraph (a) of subsection (1) of section 9 unless the Supreme Court is satisfied that the incapacity to consummate the marriage also existed at the time when the hearing of the petition commenced and that-

(a) the incapacity is not curable;

(b) the respondent refuses to submit to such medical examination as the Supreme Court considers necessary for the purpose of determining whether the incapacity is curable; or

(c) the respondent refuses to submit to proper treatment for the purpose of curing the incapacity.

(2) A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of paragraph (a) of subsection (1) of section 9 where the Supreme Court is of opinion that-

(a) by reason of-

(i) the petitioner's knowledge of the incapacity at the time of the marriage;

(ii) the conduct of the petitioner since the marriage; or

(iii) the lapse of time; or

(b) for any other reason,

it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest to make a decree.

*(Amended by Act.6 of 1982. s. 20.)*

### **Restrictions on certain grounds**

37. A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of paragraph (b) (c) or (d) of subsection (1) of section 9 unless the Supreme Court is satisfied that-

(a) the petitioner was, at the time of marriage, ignorant of the facts constituting the ground;

(b) the petition was filed not later than 12 months after the date of the marriage; and

(c) marital intercourse has not taken place with the consent of the petitioner since the petitioner discovered the existence of the facts constituting the ground.

*(Amended by Act 6 of 1982, s. 21.)*

### **Effect of decree of nullity of a voidable marriage**

38. (1) A decree of nullity under this Act of a voidable marriage annuls the marriage from and including the date on which the decree becomes absolute.

(2) Without prejudice to the operation of subsection (1) in other respects, a decree of nullity under this Act of a voidable marriage does not render illegitimate a child of the parties born since, or legitimated during, the marriage.

## **PART VII - JUDICIAL SEPARATION**

### **Grounds for judicial separation**

39. Subject to this Part, a petition under this Act by a party to a marriage for a decree of judicial separation may be based on one or more of the grounds specified in paragraphs (a) to (l) (inclusive) of section 14.

### **Application of provisions of Part V**

40. The provisions of sections 15 to 21 (inclusive) and sections 25 to 32 (inclusive), apply to and in relation to a decree of judicial separation and proceedings for such a decree and, for the purposes of those provisions as so applying, a reference in those provisions to a decree of dissolution of marriage shall be read as a reference to a decree of judicial separation.

### **Effect of decree**

41. A decree of judicial separation relieves the petitioner from the obligation to cohabit with the other party to the marriage while the decree remains in operation, but, except as provided by this Part, does not otherwise affect the marriage or the status, rights and obligations of the parties to the marriage.

### **Effect on rights to sue, devolution of property, etc.**

42. (1) While a decree of judicial separation is in operation, either party to the marriage may bring proceedings in contract or in tort against the other party.

(2) Where a party to a marriage dies intestate as to any property while a decree of judicial separation is in operation that property shall devolve as if that party had survived the other party to the marriage.

(3) Where upon, or in consequence of, the making of a decree of judicial separation a husband is ordered to pay maintenance to his wife, and the maintenance is not duly paid, the husband is liable for necessaries supplied for the wife's use.

#### **Exercise of joint powers not affected**

43. Nothing in this Part prevents a wife, during separation under a decree of judicial separation from joining in the exercise of any power given to herself and her husband jointly.

#### **Decree of judicial separation not to bar subsequent proceedings for dissolution of marriage**

44. (1) A decree of judicial separation does not prevent the institution by either party to the marriage of proceedings for a decree of dissolution of marriage.

(2) The court may, in any proceedings for a decree of dissolution of marriage on the same, or substantially the same, facts as those on which a decree of judicial separation has been made, treat the decree of judicial separation as sufficient proof of the facts constituting the ground on which that decree was made.

*(Amended by Act 6 of 1982, s. 22.)*

(3) Notwithstanding subsection (2), the court shall not grant a decree of dissolution of marriage without considering evidence given by the petitioner in support of the petition.

*(Amended by Act 6 of 1982, s. 22.)*

#### **Discharge of decree on resumption of cohabitation**

45. Where, after a decree of judicial separation has been made, the parties have voluntarily resumed cohabitation, either party may apply for an order discharging the decree.

#### **Application of this Part to decrees made before commencement of Act**

46. The provisions of sections 41 to 45 (inclusive) apply to and in relation to a decree of judicial separation made before the commencement of this Act as well as to such a decree made after the commencement of this Act.

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### **PART VIII - RESTITUTION OF CONJUGAL RIGHTS**

#### **Ground for decree of restitution of conjugal rights**

47. A petition under this Act by a party to a marriage for a decree of restitution of conjugal rights may be based on the ground that the parties to the marriage, whether or not they have at any time cohabited, are not cohabiting and that, without just cause or excuse, the party against whom the decree is sought refuses to cohabit with, and render conjugal rights to, the petitioner.

#### **Agreement for separation**

48. An agreement for separation, whether entered into before or after the commencement of this Act, does not constitute a defence to proceedings under this Act for a decree of restitution of conjugal rights.

#### **Sincerity of petitioner**

49. The Supreme Court shall not make a decree of restitution of conjugal rights unless it is satisfied-

(a) that the petitioner sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent: and

(b) that a written request for cohabitation, expressed in conciliatory language, was made to the respondent before the institution of the proceedings, or that there are special circumstances which justify the making of the decree notwithstanding that such a request was not made.  
(Amended by Act 6 of 1982, s. 23.)

#### **Notice as to home**

50. Where the Supreme Court makes a decree of restitution of conjugal rights on the petition of a husband the petitioner shall, as soon as practicable after the making of the decree, and at such other times as the rules so require, give to the respondent notice in accordance with the rules, of the provisions made by the petitioner, or which the petitioner is willing to make, with respect to a home for the purpose of enabling the respondent to comply with the decree.  
(Amended by Act 6 of 1982, s. 24.)

#### **Enforcement of decree**

51. A decree of restitution of conjugal rights is not enforceable by attachment

### **PART IX - JACTITATION OF MARRIAGE**

#### **Ground for decree of jactitation of marriage**

52. A petition under this Act for a decree of jactitation of marriage may be based on the ground that the respondent has falsely boasted and persistently asserted that a marriage has taken place between the respondent and the petitioner.

#### **Decree to be in discretion of Supreme court**

53. Notwithstanding anything contained in this Act, the Supreme Court may, in its discretion, refuse to make a decree of jactitation of marriage.  
(Amended by Act 6 of 1982, s. 25.)

### **PART X - GENERAL PROVISIONS RELATING TO RELIEF**

#### **Facts, etc., occurring before commencement of Act or outside Fiji**

54. (1) A decree may be made, or refused, under Parts V to IX, both inclusive, by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement of this Act or outside Fiji.

(2) For the purposes of this section, the provisions of sections 15, 16 and 17 shall be deemed to extend to matters which occurred before the commencement of this Act.

#### **Institution of proceedings**

55. (1) Subject to subsection (2), a matrimonial cause of a kind referred to in paragraph (a) or (b) of the definition of "matrimonial cause" in subsection (1) of section 2 of this Act shall be instituted by petition.

(2) A respondent may in the answer to the petition seek any decree or declaration that the respondent could have sought in a petition or any relief referred to in paragraph (c) of the definition of "matrimonial cause" contained in subsection (1) of section 2.

(Substituted by Ordinance 29 of 1969, s. 2.)

(3) Proceedings of a kind referred to in paragraph (c) of the definition of "matrimonial cause" in subsection (1) of section 2 that are in relation to proceedings under this Act for a decree or declaration of a kind referred to in paragraph (a) or (b) of that definition-

(a) may be instituted by the same petition as that by which the proceedings for that decree or declaration are instituted, and

(b) except as permitted by the rules or by leave of the court, shall not be instituted in any other manner.

*(Amended by Act 6 of 1982, s. 26.)*

(4) The court shall, so far as is practicable, hear and determine at the same time all proceedings instituted by the one petition.

*(Amended by Act 6 of 1982, s. 26.)*

### **Duty of court**

56. Except as provided by this Act, the court, upon being satisfied of the existence of any ground in respect of which relief is sought, shall make the appropriate decree.

*(Amended by Act 6 of 1982, s. 27.)*

### **Decree *nisi* in first instance**

57. A decree of dissolution of marriage or nullity of a voidable marriage under this Act shall, in the first instance, be a decree *nisi*.

### **Decree absolute where children under eighteen years, etc.**

58. (1) A decree *nisi* of dissolution of a marriage or of nullity of a voidable marriage does not become absolute unless the court, by order, has declared that it is satisfied-

(a) that there are no children of the marriage in relation to whom this section applies; or

(b) that the only children of the marriage in relation to whom this section applies are the children specified in the order and that-

(i) proper arrangements in all the circumstances have been made for the welfare and, where appropriate, education or advancement of those children; or

(ii) there are special circumstances by reason of which the decree *nisi* should become absolute notwithstanding that the court is not satisfied that such arrangements have been made.

(2) In this section, "children of the marriage in relation to whom this section applies" means-

(a) the children of the marriage who are under the age of 18 years at the date of the decree *nisi*; and

(b) any children of the marriage in relation to whom the court has, in pursuance of subsection (3), ordered that this section shall apply.

(3) The court may, in a particular case, if it is of opinion that there are special circumstances which justify its so doing, order that this section shall apply in relation to a child of the marriage who has attained the age of 18 years at the date of the decree *nisi*.

*(Amended by Act 6 of 1982, s. 28.)*

### **When decree becomes absolute**

59. (1) Subject to this section, a decree *nisi* made on or after the commencement of this Act becomes absolute by force of this section at the expiration of-

(a) a period of 3 months from the making of the decree;

(b) a period of 28 days from the making of an order under subsection (1) of section 58;

whichever is the later.

*(Amended by Order\* 21 October 1971.) (\*see Legal Notice No. 135 of 1971)*

(2) Where a decree *nisi* has been made in any proceedings, the court by which the decree *nisi* was made, or the Supreme Court or Court of Appeal on an appeal thereto with respect to the decree *nisi*, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection-

(a) having regard to the possibility of an appeal or further appeal, make an order extending the period at the expiration of which the decree *nisi* will become absolute; or

(b) if it is satisfied that there are special circumstances which justify its so doing, make an order reducing the period at the expiration of which the decree *nisi* will become absolute.

*(Amended by Act 6 of 1982, s. 29.)*

(3) Where an appeal is instituted before a decree *nisi* has become absolute, then notwithstanding any order in force under subsection (2) at the time of the institution of the appeal, the decree *nisi*, unless reversed or rescinded, becomes absolute by force of this section-

(a) at the expiration of a period of 28 days from the day on which the appeal is determined or discontinued; or

(b) on the day on which the decree would have become absolute under subsection (1) if no appeal had been instituted,

whichever is the later.

(4) A decree *nisi* shall not become absolute by force of this section where either of the parties to the marriage has died.

(5) In this section "appeal", in relation to a decree *nisi*, means-

(a) an appeal, application for leave to appeal against or an intervention or an application for leave to intervene relating to-

(i) the decree *nisi*; or

(ii) an order under section 58 in relation to the proceedings in which the decree *nisi* was made; or

(b) an application under section 61 or 62 for rescission of the decree or an appeal or application for leave to appeal arising out of such an application.

(6) For the purposes of this section, where an application for leave to appeal or to intervene, or for a rehearing, is granted, the application shall be deemed not to have been determined or discontinued so long as-

- (a) the leave granted remains capable of being exercised; or
- (b) an appeal, intervention or rehearing instituted in pursuance of the leave is pending.

### **Certificate as to decree absolute**

60. (1) Where a decree *nisi* becomes absolute, a memorandum of the fact and of the date on which the decree became absolute shall be prepared and filed by the Chief Registrar of the Supreme Court or, where the decree was made by a magistrate's court, by the clerk of the court.

*(Substituted by Act 6 of 1982, s. 30.)*

(2) Where a decree *nisi* has become absolute, the Chief Registrar of the Supreme Court or, where the decree was made by a magistrate's court, the clerk of the court, shall, on payment of the appropriate fee, issue to any person applying for the same a certificate that the decree has become absolute.

*(Substituted by Act 6 of 1982, s. 30.)*

(3) A certificate given under subsection (2) is in all courts and for all purposes, evidence of the matters specified in the certificate.

### **Rescission of decree *nisi* where parties reconciled, etc.**

61. Notwithstanding anything contained in this Part where a decree *nisi* has been made in proceedings for a decree of dissolution of marriage, the court may, at any time before the decree becomes absolute, upon the application of either of the parties to the marriage, rescind the decree on the ground that the parties to the marriage have become reconciled.

*(Amended by Act 6 of 1982, s. 31.)*

### **Rescission of decree *nisi* on ground of miscarriage of justice**

62. Where a decree *nisi* has been made but not become absolute, the court may, on the application of a party to the proceedings, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstances, rescind the decree and, if it thinks fit, order that the proceedings be reheard.

*(Amended by Act 6 of 1982, s. 32.)*

## **PART XI - PROCEEDINGS BEFORE MAGISTRATES' COURTS**

*(Substituted by Act 6 of 1982, s. 33.)*

### **Extension of application of provisions of Magistrates' Court Act to proceedings under this Act**

63. Subject to the provisions of this Act and of any other written law and subject to such modifications, exceptions and adaptations as may be prescribed by the rules, the provisions of the Magistrates' Court Act shall apply in relation to proceedings under this Act in a magistrate's court as they apply in relation to any civil proceedings.

*(Substituted by Act 6 of 1982, s. 33.)*

### **Petitions may be drawn up by or before magistrate**

64. Subject to the rules, a petition required under section 55 may in such proceedings, be drawn up by or before a magistrate from information furnished orally by the petitioner.

*(Substituted by Act 6 of 1982, s. 33.)*

### **Special provisions as to District Officer's Court, Rotuma**

65. Notwithstanding any thing contained in this Act, the provisions set out in the Second Schedule shall have effect in relation to any proceedings instituted under this Act in the District Officer's Court, Rotuma.

*(Substituted by Act 6 of 1982, s. 33.)*

66. *(Repealed by Act 6 of 1982. s. 33.)*  
67. *(Repealed by Act 6 of 1982. s. 33.)*  
68. *(Repealed by Act 6 of 1982. s. 33.)*  
69. *(Repealed by Act 6 of 1982. s. 33.)*  
70. *(Repealed by Act 6 of 1982. s. 33.)*  
71. *(Repealed by Act 6 of 1982. s. 33.)*  
72. *(Repealed by Act 6 of 1982. s. 33.)*  
73. *(Repealed by Act 6 of 1982. s. 33.)*  
74. *(Repealed by Act 6 of 1982. s. 33.)*  
75. *(Repealed by Act 6 of 1982. s. 33.)*

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## **PART XII - INTERVENTION**

### **Intervention by Attorney-General on request from Supreme Court**

76. In any proceedings under this Act where the Supreme Court requests him to do so, the Attorney-General may intervene in, and contest or argue any question arising in, the proceedings.  
*(Amended by Act 6 of 1982, s. 34.)*

### **Intervention of Attorney-General in other cases**

77. In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, or in relation to the custody or guardianship of children, where the Attorney-General has reason to believe that there are matters relevant to the proceedings that have not been, or may not be, but ought to be, made known to the court, he may, at any time before the proceedings are finally disposed of, intervene in the proceedings.  
*(Amended by Act 6 of 1982, s. 35.)*

### **Delegation by Attorney-General**

78. (1) The Attorney-General may, either generally or in relation to a matter or class of matters, by writing under his hand, delegate all or any of his powers and functions under this Part (except this power of delegation) to the person occupying from time to time, while the delegation is in force, the office of Solicitor-General or to any Legal Officer.  
*(Amended by Act 13 of 1971, s. 3.)*

(2) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Attorney-General.

### **Intervention by other persons**

79. (1) In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, where a person applies to the court for leave to intervene in the proceedings and the court is satisfied that the person may be able to prove facts relevant to the proceedings that have not been or may not be, but ought to be, made known to the court, the court may, at any time before the proceedings are finally disposed of, make an order entitling that person to intervene in the proceedings.

(2) An order under this section may be made upon such conditions as the court thinks fit, including the giving of security for costs.  
*(Amended by Act 6 of 1982. s. 36.)*



### **Rescission of decree *nisi* in consequence of intervention**

80. Where an intervention takes place under this Part after a decree *nisi* has been made and it is proved that the petitioner has been guilty of collusion with intent to cause a perversion of justice or that material facts have not been brought before the court, the court may rescind the decree.  
(Amended by Act 6 of 1982. s. 37.)

### **Proceedings not to be taken to be finally disposed of before decree absolute**

81. For the purposes of this Part, where a decree *nisi* has been made in any proceedings, the proceedings shall not be taken to have been finally disposed of until the decree *nisi* has become absolute.

### **Procedure on intervention**

82. A person intervening under this Part or Part V shall be deemed to be a party in the proceedings with all the rights, duties and liabilities of a party.

## **PART XIII - MAINTENANCE, CUSTODY AND SETTLEMENTS**

### **Definition**

83. In this Part "marriage" includes a purported marriage that is void or has been declared to be such.

### **Powers of court in maintenance proceedings**

84. (1) Subject to the provisions of this section, the court may, in any matter or cause in which application has been made with respect to the maintenance of a party to a marriage, or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such an order on such application as it thinks proper having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.  
(Substituted by Ordinance 21 of 1969, s.5.)

(2) Subject to this section and to the rules, the court may, in proceedings for an order for the maintenance of a party to a marriage, or of children of the marriage, pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(3) The court may make an order for the maintenance of a party notwithstanding that a decree is or has been made against that party in the proceedings to which the proceedings with respect to maintenance are related.

(4) The power of the court to make an order with respect to the maintenance of children of the marriage shall not be exercised for the benefit of a child who has attained the age of 18 years unless the court is of opinion that there are special circumstances that justify the making of such an order for the benefit of that child.

(Amended by Act 6 of 1982, s. 38.)

### **Powers of court in custody, etc., proceedings**

85. (1) In proceedings in which application has been made with respect to the custody, guardianship, welfare, advancement or education of children of a marriage-

(a) the court shall regard the interest of the children as the paramount consideration; and

(b) subject to paragraph (a) the court may make such order in respect of those matters as it thinks proper.

(Amended by Ordinance 21 of 1969. s.6.)

(2) The court may adjourn any proceedings referred to in subsection (1) until a report has been obtained from a welfare officer, or from some other suitable person appointed for this purpose by the court, on such matters relevant to the proceedings as the court considers desirable and may receive the report in evidence.

(3) In proceedings with respect to the custody of children of a marriage, the court may, if it is satisfied that it is desirable to do so, make an order placing the children, or such of them as it thinks fit, in the custody of a person other than a party to the marriage.

(4) Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be.

*(Amended by Act 6 of 1982, s. 39.)*

### **Powers of court in proceedings with respect to settlement of property**

86. (1) The court may, in proceedings under this Act, by order, require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the court considers just and equitable in the circumstances of the case.

(2) The court may, in proceedings under this Act, make such order as the court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of, the marriage of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements on the parties to the marriage, or either of them.

(3) The power of the court to make orders of the kind referred to in this section shall not be exercised for the benefit of a child who has attained the age of 18 years unless the court is of opinion that there are special circumstances that justify the making of such an order for the benefit of that child.

*(Amended by Act 6 of 1982, s. 40.)*

### **General powers of the court**

87. (1) The court, in exercising its powers under this Part, may do any or all of the following:-

(a) order that a lump sum or a weekly, monthly, yearly or other periodic sum be paid;

(b) order that a lump sum or a weekly, monthly, yearly or other periodic sum be secured;

(c) where a periodic sum is ordered to be paid, order that its payment be wholly or partly secured in such manner as the court directs;

(d) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(e) appoint or remove trustees;

(f) order that payments be made direct to a party to the marriage, or to a trustee to be appointed or to any other person or authority for the benefit of

a party to the marriage;

(g) order that payment of maintenance in respect of a child be made to such person or authority as the court specifies;

(h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;

(i) impose terms and conditions;

(j) in relation to an order made in respect of a matter referred to in any of sections 84, 85 or 86, whether made before or after the commencement of this Act-

(i) discharge the order if the party in whose favour it was made marries again or if there is any other just cause for so doing;

(ii) modify the effect of the order or suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;

(iii) revive wholly or in part an order suspended under subparagraph (ii); or

(iv) subject to subsection (2), vary the order so as to increase or decrease any amount ordered to be paid by the court;

(k) sanction an agreement for the acceptance of a lump sum or periodic sums or other benefits in lieu of rights under an order made in respect of matters referred to in any of sections 84, 85 or 86, or any right to seek such an order;

(l) make any other order which it considers necessary to make to do justice;

(m) include its order under this Part in a decree under another Part; and

(n) subject to this Act, make an order under this Part at any time before or after the making of a decree under another Part.

(2) The court shall not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied-

(a) that, since the order was made or last varied, the circumstances of the parties or either of them or of any child for whose benefit the order was made, have changed to such an extent as to justify its so doing; or

(b) that material facts were withheld from the court, or the magistrate's court, as the case may be, or material evidence previously given before such court was false.

(3) The court shall not make an order increasing or decreasing-

- (a) the security for the payment of a periodic sum ordered to be paid; or
- (b) the amount of a lump sum or periodic sum ordered to be secured, unless it is satisfied that material facts were withheld from the court, or the magistrate's court, as the case may be, or that material evidence given before such court was false.  
*(Amended by Act 6 of 1982, s. 41.)*

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### **Execution of deeds etc. by order of the court**

88. (1) Where-

- (a) an order under this Part has directed a person to execute a deed or instrument; and
- (b) that person has refused or neglected to comply with the direction or, for any other reason, the court thinks it necessary to exercise the powers of the court under this subsection,

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

*(Amended by Act 6 of 1982, s. 42.)*

(2) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person directed by the order to execute it.

(3) The court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

*(Amended by Act 6 of 1982, s. 42.)*

### **Power of court to make orders on dismissal of petition**

89. (1) Except as provided by this section, the court shall not make an order under this Part in favour of the petitioner where the petition for the principal relief has been dismissed.

*(Amended by Act 6 of 1982, s. 43.)*

(2) Where-

- (a) the petition for the principal relief has been dismissed after a hearing on the merits; and
- (b) the court is satisfied that-
  - (i) the proceedings for the principal relief were instituted in good faith to obtain that relief; and
  - (ii) there is no reasonable likelihood of the parties becoming reconciled,

the court may, if it considers that it is desirable to do so, make an order under this Part in favour of the petitioner, other than an order under section 86.

*(Amended by Act 6 of 1982, s. 43.)*

(3) The court shall not make an order by virtue of subsection (2) unless the proceedings for the order have been heard at the same time as, or immediately after, the proceedings for the principal

relief.

*(Amended by Act 6 of 1982, s. 43.)*

(4) In this section "principal relief" means relief of a kind referred to in paragraph (a) or (b) of the definition of "matrimonial cause" in subsection (1) of section 2.

## **PART XIV - APPEALS**

### **No appeal after decree absolute**

90. An appeal does not lie from a decree of dissolution of marriage or nullity of a voidable marriage after the decree has become absolute.

### **Appeals**

91. (1) A person aggrieved by a decree of the Supreme Court exercising its original or appellate jurisdiction under this Act may, within such time as may be prescribed by the rules, appeal from the decree to the Court of Appeal.

(2) A person aggrieved by a decree of a magistrate's court exercising its jurisdiction under this Act may, within such time as may be prescribed by the rules, appeal from the decree to the Supreme Court.

(3) Upon an appeal under this section, the Court of Appeal or the Supreme Court, as the case may be, may affirm, reverse or vary the decree appealed against, and may-

(a) make such decree as in its opinion should have been made at first instance or on appeal, as the case may be; or

(b) order a rehearing at first instance on such terms and conditions, if any, as it thinks fit.

(4) Without prejudice to the right of appeal conferred by subsection (1), a magistrate (other than the District Officer, Rotuma) may reserve for consideration by the Supreme Court, on a case to be stated by him, any question of law which may arise at the hearing before him of proceedings under this Act, and may make a decree in such proceedings subject to the opinion of the Supreme Court; and the Supreme Court may determine any such question with or without hearing argument.

*(Substituted by Act 6 of 1982, s. 44.)*

## **PART XV - RECOGNITION OF DECREES**

### **Recognition of decrees made outside Fiji**

92. (1) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country shall be recognised as valid in Fiji where, at the date of the institution of the proceedings that resulted in the dissolution or annulment, the party at whose instance the dissolution or annulment was effected (or if it was effected at the instance of both parties, either of those parties) was-

(a) in the case of the dissolution of a marriage or the annulment of a voidable marriage, domiciled in that foreign country; or

(b) in the case of the annulment of a void marriage, domiciled or resident in that foreign country.

(2) For the purposes of subsection (1)-

(a) where a dissolution of a marriage was effected in accordance with the law of a foreign country at the instance of a deserted wife who was domiciled in that foreign country either immediately before her marriage or immediately before the desertion, she shall be deemed to have been domiciled in that foreign country at the date of the institution of the proceedings that resulted in the dissolution; and

(b) a wife who, at the date of the institution of the proceedings that resulted in a dissolution or annulment of her marriage in accordance with the law of a foreign country, was resident in that foreign country, and had been so resident for a period of 3 years immediately preceding that date shall be deemed to have been domiciled in that foreign country at that date.

(3) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country, not being a dissolution or annulment to which subsection (2) applies, shall be recognised as valid in Fiji if its validity would have been recognised under the law of the foreign country in which, in the case of a dissolution, the parties were domiciled at the date of the dissolution or in which, in the case of an annulment, either party was domiciled at the date of annulment.

(4) Any dissolution or annulment of a marriage that would be recognised as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies shall be recognised as valid in Fiji and the operation of this subsection shall not be limited by any implication from those provisions.

(5) For the purposes of this section, the court, in considering the validity of a dissolution or annulment effected under the law of a foreign country, may treat as proved any facts found by a court of the foreign country or otherwise established for the purposes of the law of the foreign country.

*(Amended by Act 6 of 1982. s. 45.)*

(6) A dissolution or annulment of a marriage shall not be recognised as valid by virtue of subsection (1) or (3) where, under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice.

(7) Subsections (1) to (6) apply in relation to dissolution and annulment effected, whether by decree, legislation or otherwise, before or after the commencement of this Act.

(8) In this section "foreign country" means a country, or part of a country, outside Fiji.

## **PART XVI - EVIDENCE**

### **Standard of proof**

93. (1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the court.

(2) Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it is sufficient if the court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

*(Amended by Act 6 of 1982. s. 46.)*

### **Evidence of husbands and wives**

94. (1) Subject to this Part, all parties and the wives and husbands of all parties are competent and compellable witnesses in proceedings under this Act.

(2) Subject to subsection (3), in proceedings under this Act a husband is competent, but not compellable, to disclose communications made between him and his wife during the marriage, and

a wife is competent, but not compellable, to disclose communications made between her and her husband during the marriage.

(3) Where a husband and wife are both parties to proceedings under this Act each of them is competent and compellable to disclose communications made between them during the marriage.

(4) Subsections (2) and (3) apply to communications made before, as well as to communications made after, the commencement of this Act.

#### **Evidence of non-access**

95. In proceedings under this Act, either party to a marriage may give evidence proving or tending to prove that the parties to the marriage did not have sexual relations with each other at any particular time, but is not compellable to give such evidence if it would show or tend to show that a child born to the wife during the marriage was illegitimate.

#### **Evidence as to adultery**

96. (1) A witness in proceedings under this Act who being a party, voluntarily gives evidence on his own behalf, or, whether he is a party or not, is called by a party may be asked, and is bound to answer a question the answer to which may show, or tend to show, adultery by or with the witness where proof of that adultery would be material to the decision of the case.

(2) Except as provided by subsection (1), a witness in proceedings under this Act (whether a party to the proceedings or not) is not liable to be asked or bound to answer, a question the answer to which may show, or tend to show, that the witness has committed adultery.

#### **Proof of marriage, etc.**

97. In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Fiji or elsewhere.

*(Amended by Act 6 of 1982, s. 47.)*

#### **Convictions for crimes to be evidence**

98. (1) In any proceedings under this Act, evidence that a party to a marriage has been convicted, whether in Fiji or elsewhere, of a crime is evidence that the party did the acts or things constituting the crime.

(2) In proceedings under this Act, a certificate of the conviction of a person of a crime by a court in Fiji or a court of any part of the Commonwealth, being a certificate purporting to be signed by the Registrar or other proper officer of that court, is evidence of the fact of the conviction and of any particulars of the crime or of the conviction, including the date on which the crime was committed, and of any sentence of imprisonment imposed, that are included in the certificate.

99. *(Repealed by Act 6 of 1982, s. 48.)*

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## **PART XVII - ENFORCEMENT OF DECREES**

### **Attachment**

100. (1) Subject to the rules, the court may enforce by attachment or by sequestration an order made under this Act for payment of maintenance or costs or in respect of the custody of, or access to, children.

(2) The court shall order the release from custody of a person who has been attached under this section upon being satisfied that that person has complied with the order in respect of which he was attached and may, at any time, if the court is satisfied that it is just and equitable to do so, order the

release of such a person notwithstanding that he has not complied with that order.

(3) Where a person who has been attached under this section in consequence of his failure to comply with an order for the payment of maintenance or costs becomes a bankrupt, he shall not be kept in custody under the attachment longer than 6 months after he becomes a bankrupt unless the court otherwise orders.

*(Amended by Act 6 of 1982. s. 49.)*

### **Recovery of moneys as judgment debt**

101. (1) Where a decree made under this Act orders the payment of money to a person, any moneys payable under the decree may be recovered as a judgment debt in a court of competent jurisdiction.

(2) A decree made under this Act may be enforced by leave of the court and on such terms and conditions as the court thinks fit, against the estate of a party after the party's death.

*(Amended by Act 6 of 1982. s. 50.)*

### **Summary enforcement of orders for maintenance**

102. Without prejudice to any power relating to enforcement of decrees exercisable under this Act apart from this section, an order for payment of maintenance made under this Act shall be deemed to be a maintenance order for the purposes of the Maintenance (Prevention of Desertion and Miscellaneous Provisions) Act, and may be enforced thereunder.

*(Cap. 53.)*

### **Enforcement by other means**

103. Subject to this Act. the rules may make provision for the enforcement of decrees made under this Act by means other than those specified in the preceding provisions of this Part.

### **Enforcement of existing decrees**

104. A decree made in a matrimonial cause before the commencement of this Act may be enforced-

(a) in the manner in which it could be enforced if this Act had not been passed; or

(b) subject to the rules, in the manner in which a like decree made under this Art may be enforced.

## **PART XVIII - MISCELLANEOUS**

### **Hearings to be in open court**

105. (1) Except to the extent to which the rules make provision for proceedings, or part of proceedings to be heard in chambers, the jurisdiction under this Act of the court shall, subject to subsection (2) be exercised in open court.

(2) Where, in proceedings under this Act, the court is satisfied that there are special circumstances that make it desirable in the interests of the proper administration of justice, that the proceedings, or any part of the proceedings, should not be heard in open court, it may order that any persons, not being parties to the proceedings or their barristers and solicitors, shall be excluded during the hearing of the proceedings or any part of the proceedings, as the case may be.

*(Amended by Act 6 of 1982, s. 51.)*

### **Restrictions on publication of evidence**

106. (1) Except as provided by this section, a person shall not, in relation to any proceedings under this Act, print or publish, or cause to be printed or published, any account of evidence in the proceedings, or any other account or particulars of the proceedings other than-



(a) the names, addresses and occupations of the parties and witnesses, and the name or names of the judge or the magistrate constituting the court and of the barristers and solicitors;

(b) a concise statement of the nature and grounds of the proceedings and of the charges, defences and counter charges, in support of which evidence has been given;

(c) submissions on any points of law arising in the course of the proceedings, and the decision of the court on those points; or

(d) the judgment of the court and observations made by the court in giving judgment.

*(Amended by Act 6 of 1982, s. 52.)*

(2) The court may, if it thinks fit in any particular proceedings, order that the matters referred to in paragraphs (a), (b), (c) and (d) of subsection (1) or any of them, shall not be printed or published.  
*(Amended by Act 6 of 1982, s. 52.)*

(3) A person who contravenes subsection (1), or prints or publishes, or causes to be printed or published, any matter, or part of a matter, in contravention of an order of a court under subsection (2), shall be guilty of an offence and liable to a fine not exceeding \$400 or to imprisonment not exceeding 6 months or to both such fine and imprisonment.

### **Injunctions**

107. The court exercising jurisdiction under this Act may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court thinks just.

*(Amended by Act 6 of 1982, s. 53.)*

### **Costs**

108. In proceedings under this Act, the court may, subject to the rules, make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

*(Amended by Act 6 of 1982, s. 54.)*

### **Frivolous or vexatious proceedings**

109. (1) The court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious, dismiss the proceedings.

(2) The court may, at any stage of proceedings under this Act, if it is satisfied that the allegations made in respect of a party to the proceedings are frivolous or vexatious, order that that party be dismissed from the proceedings.

*(Amended by Act 6 of 1982, s. 55.)*

### **Rules**

110. The Chief Justice may make rules for or in relation to the practice and procedure of the Supreme Court, or a magistrates' court, exercising jurisdiction under this Act, including rules-

(a) prescribing matters relating to the costs of proceedings and the assessment or taxation of those costs;

(b) prescribing the forms to be used and the fees to be charged in respect of proceedings under this Act;

(c) referring claims or applications for or relating to the custody of children or maintenance or any other matter before the court to a welfare officer or other suitable person for investigation, report and recommendation;

(d) providing for legal aid and remission of court fees;

(e) providing for manner of service of any document requiring to be served or for the manner of dispensing with such service;

(f) prescribing matters incidental to the matters specified in the preceding paragraphs of this section.

*(Amended by Act 6 of 1982, s. 56.)*

### **Jurisdiction in relation to validity, etc. of marriages performed before commencement of Act**

111. For the purpose of avoiding doubt it is hereby declared that, subject to the provisions of this Act relating to appeals, jurisdiction thereunder in relation to validity or invalidity of any marriage or purported marriage performed before the commencement of this Act shall be exercised only by the court in accordance with the provisions of subsection (1) of section 10.

*(Amended by Act 6 of 1982, s. 57.)*

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### **FIRST SCHEDULE**

#### ***(Section 7)***

*(Heading substituted by Act 6 of 1982, s. 58.)*

#### **PROHIBITED DEGREES OF CONSANGUINITY AND AFFINITY**

Marriage of a man is prohibited if the woman is, or has been his-

<i>Consanguinity</i>	<i>Affinity</i>
Ancestress .....	Wife's mother
Descendant .....	Wife's grandmother
Sister .....	Wife's daughter
Father's sister .....	Wife's son's daughter
Mother's sister .....	Wife's daughter's daughter
Brother's daughter .....	Father's wife
Sister's daughter .....	Grandfather's wife
	Son's wife
	Son's son's wife
	Daughter's son's wife

Marriage of a woman is prohibited if the man is, or has been, her-

<i>Consanguinity</i>	<i>Affinity</i>
Ancestor .....	Husband's father
Descendant .....	Husband's grandfather

Brother .....	Husband's son
Father's brother .....	Husband's son's son
Mother's brother .....	Husband's daughter's son
Brother's son .....	Mother's husband
Sister's son .....	Grandmother's husband
	Daughter's husband
	Son's daughter's husband
	Daughter's daughter's husband

**SECOND SCHEDULE**

**(Section 65)**

*(Inserted by Act 6 of 1982. s. 59.)*

**SPECIAL PROVISIONS AS TO DISTRICT OFFICER'S COURT, ROTUMA**

*Interpretation*

1. In this Schedule-

- (a) "the District Officer" means the District Officer for Rotuma; and
- (b) "the District Officer's Court" means the District Officer's Court, Rotuma.

*District Officer not to give judgment*

2. Subject to paragraph 7 of this Schedule, upon the termination of the hearing of proceedings instituted under the provisions of this Act in the District Officer's Court. the District Officer shall not give judgment but shall adjourn the case for any period not exceeding 3 months, and, thereafter, for such periods, if any, as may be necessary to give effect to the directions of the Supreme Court under sub-paragraph (2) of paragraph 4.

*District Officer to take evidence down in writing*

3.-(1) At the hearing of such proceedings, the District Officer shall receive the evidence of the parties present, of the witnesses who may be brought before him by or on behalf of the parties and of any person whom he may see fit to summon for the purpose of giving evidence in the matter.

(2) All such evidence shall be taken down in writing by or in the presence of the District Officer.

(3) The provisions of sub-paragraphs (1) and (2) shall apply to any such proceedings instituted by petition, whether or not the respondent or any other party admits the facts alleged in the petition.

*Certified copy of evidence, etc. to be forwarded to the Supreme Court for directions*

4.-(1) As soon as possible after the termination of the hearing, the District Officer shall forward to the Supreme Court a certified copy of the evidence taken, together with copies of all process and other documents in the proceedings and a statement of his opinion as to the decree, if any, to which the petitioner is entitled; and the Supreme Court may, upon consideration thereof, either accept, reject or modify such opinion, or order-

- (i) that further evidence be taken by the District Officer;
- (ii) that the case be reheard by the District. Officer; or

(iii) that the case be transferred to itself for hearing.

(2) Unless the Supreme Court makes any of the orders specified in sub-section (1), it shall decide the case and direct what decree shall be pronounced by the District Officer.

*District Officer shall pronounce decision of Supreme Court*

5.-(1) Upon the receipt of the decision of the Supreme Court, the District Officer shall pronounce such decree as the Supreme Court has directed.

(2) The date of the decree shall be the date on which it is pronounced and the notice of such date shall thereupon be communicated by the District Officer to the Chief Registrar of the Supreme Court.

(3) Any decree pronounced in pursuance of this paragraph shall, for all purposes, be deemed to be a decree of the Supreme Court.

*District Officer to report facts relating to children of marriage*

6. In any such proceedings for dissolution of marriage, the District Officer shall, as soon as may be, but not later than 3 months after the date of the decree nisi, forward to the Supreme Court all available facts relating to the children of the marriage, if any, which, in his opinion, the Supreme Court ought to consider before making an order under section 58; and the Supreme Court may, after considering the facts make such order under that section as it considers appropriate:

Provided that the Supreme Court may, before making the order, make such further enquiry relating to the circumstances of the case as it may consider necessary.

*Custody and maintenance of children and maintenance of wife*

7.-(1) Where an order under Part XIII has been included in a decree pronounced in pursuance of paragraph 5, proceedings for the modification, discharge, variation or revival of such order may, subject to the rules, be instituted in the District Officer's Court. and the provisions of paragraphs 2, 3, 4 and 5 shall, so far as applicable, apply to such proceedings.

(2) Notwithstanding sub-paragraph (1), where in any proceedings instituted in the District Officer's Court, the Supreme Court makes an order under paragraph (a), (f) or (g) of subsection (1) of section 87, the District Officer shall, subject to subsection (2) of that section, have the same power to discharge, modify, revive, vary or otherwise deal with such order as the Supreme Court has:

Provided that an order made by the District Officer under this paragraph shall not take effect unless confirmed by the Supreme Court.

*Powers of District Officer's Court to enforce orders, make interim orders, etc.*

8.-(1) Without prejudice to sections 102 and 103, decrees pronounced in pursuance of paragraph 5 may, subject to the rules, be enforced in the District Officer's Court under the ordinary procedure of a magistrate's court.

(2) In proceedings for dissolution of marriage or judicial separation instituted in the District Officer's Court, the District Officer shall have the same power to make an order for the maintenance of a party to the marriage, or of children of the marriage, pending the disposal of the proceedings, as any other magistrate's court has under this Act.

(3) Any money paid in pursuance of an order made under subsection (2) shall be paid into the District Officer's Court for payment to. the party in whose favour such order has been made.

*Controlled by Ministry of Justice*