



















































- (2) With the exception of (a) above, the transactions may be ratified in writing within a reasonable time.
  - (3) Transactions (b)-(f) shall be excepted from the consent requirement if carried out in the ordinary course of the business, profession or trade of either spouse;
  - (4) Furniture or household effects forming part of the joint estate shall not be sold or encumbered without the mutual consent of both spouses;
  - (5) Donations or alienation without value of an asset forming part of the joint estate shall not be made without the consent of the other spouse;
  - (6) Transactions entered into in violation of (2)(b) (c) and (d) shall be unenforceable against the joint estate. Note: This would place the burden on third parties to take steps to ensure their interests when entering into such transactions, such as requiring the signature of both spouses married in community of property.
  - (7) In the event of any other transaction entered into by one spouse in violation of Section 10, if it results in a loss to the joint estate, an adjustment shall be given to the other spouse upon the division of the joint estate;
  - (8) In the event that one spouse enters into transactions in violation of subsection (1)(f), at the option of the other spouse, the transaction shall be voidable upon application to the High Court. The debatable question is whether this provision should also apply to transactions referred to in subsections (4) and (5)?
- The Deeds Registry Act (and Registration of Deeds in Rehoboth Act) should be amended -

- (a) to remove the prohibition on registration of immovable property, etc. in the name of a woman married in community of property and to confer the same rights upon women with respect to the registration of deeds, etc; to eliminate the requirement that women married out of community of property but subject to the marital power must have the assistance of their husband in order to register a deed, etc.;
  - (b) to prohibit the sale, incumbrance etc., of all immovable property which forms part of the joint estate of a couple married in community of property without the consent of both spouses;
  - (c) to require that the future property purchased by the husband or wife married in community of property shall registered as joint property in both names; and that other transactions requiring registration in terms of the Deeds Registry Act shall be done in the names of both spouses;
  - (d) with respect to existing property which forms part of the joint estate and is currently registered in the name of the husband married in community of property, to entitle the wife to have deeds registered in her husband's name to be endorsed by the Registrar to note that the property is part of a joint estate of her husband and herself: to further require that any person who wishes to enter into a transaction in terms of the Deeds Registry Act in the future must prove his or her marital status and in the event that a person is married in community of property, to require a written consent of the other spouse with respect to the transaction;
  - (e) to require that all future deeds registered in the name of a natural person should reflect the marital status of the person as well as their matrimonial property regime;
- Provide for joint registration of agricultural land in the name of husband and wife (amend Subdivision of Agricultural Land Act (No. 70 of 1970));

- Require that banking institutions shall permit husband and wife to open joint bank accounts;
- Provide that a wife's domicile shall be independent of her husband's and shall be determined in accordance with the ordinary rules of domicile;
- Provide that the domicile of the marriage for the purposes of matrimonial property shall be either the domicile of the husband or wife at the time of marriage and shall be designated jointly by the spouses at the time of marriage;
- Provide that the domicile of the children of the marriage shall be determined by the location of the family home or if the child resides with only one parent then the location of that home.
- Provide for the right of either party to seek judicial relief in the event that the other spouse unreasonably withholds consent and provide for the right of either spouse to petition the court to partition the joint estate in the event that interests of the spouse in the joint estate are being prejudiced by the conduct of the other spouse, on such conditions as will not prejudice the rights of their parties.
- Repeal sections 1 and 2 of the Matrimonial Affairs Ordinance of 1955 (Ord. No. 25 of 1955);
- This Act shall apply to all future marriages and to all existing marriages where the wife is subject to her husband's marital power.

## **EXPLANATORY NOTE - MATRIMONIAL PROPERTY REGIMES**

38. The Commission considered whether it should recommend, along with the abolition of the marital power, immediate reform of the marriage and matrimonial property laws in Namibia. It notes that the Recognition of Certain Marriages Act (No. 18 of 1991) provides an important precedent in Namibian law by recognizing marriages in terms of the SWAPO Family Act, which provides for joint ownership of property. The Commission studied the matrimonial property laws of several other countries, including South Africa's Matrimonial Property Act (Act No. 88 of 1991). The South African legislation introduced the accrual system as the property regime for all marriages out of community of property unless specifically excluded by antenuptial agreement, and also provided a transitional period in which couples could change their matrimonial property regime. The Commission is of the opinion that the reform of the matrimonial property law requires additional research with respect to property relations under both general law and customary law and a closer look at the matrimonial property laws of other countries as well as extensive consultation within our society. For this reason the Commission recommends that the first legislation be limited to providing for equality of husband and wife during marriage and that the reform of matrimonial property law and related issues concerning divorce and inheritance form part of the longer-term reform programme of the Commission.

## **DRAFT LEGISLATION**

39. In order to assist in the speedy dismantling of the discriminatory laws described herein the Commission has prepared a draft bill, The Married Women Equality Bill, which forms part of this report as an annexure. The Bill is drafted along the lines of the recommendations contained in this report and is confined, as a first step to the removal of women's disabilities and inequalities. There is also attached to the Bill a list of consequential amendments to the existing laws that need to be made in order to give effect to the proposed law.

## ANNEXURE

# BILL

To abolish the husband's marital power at common law; to provide for the wife's domicile of choice; to confer natural guardianship of children upon both parents; to provide for equal status of wife and husband during marriage; and to provide for matters connected with or incidental to the foregoing.

*(Introduced by the Minister of Justice)*

## ARRANGEMENT OF SECTIONS

### PART I

#### INTRODUCTORY PROVISIONS

1. Definitions.
2. Application of Act.

### PART II

#### ABOLITION OF HUSBAND'S MARITAL POWER

3. Abolition of marital power.
4. Effect of abolition of the husband's marital power.
5. Abolition of husband's head of household status

**PART III**

**ABOLITION OF OTHERS INCIDENTS  
OF THE WIFE'S INEQUALITY**

6. Wife's domicile of choice.
7. Joint natural guardianship of mother and father

**PART IV**

**MARRIAGES IN COMMUNITY OF PROPERTY**

8. Equality of spouses in regard to joint estate.
9. Spouse's juristic acts generally not subject to other spouse's consent.
10. Acts of spouse requiring other spouse's consent.
11. Power of court to dispense with spouse's consent.
12. Consequences of act performed without required consent.
13. Suspension of rights of spouse.
14. Recovery of debts from joint estate.

**PART V**

**GENERAL**

15. Repeal and amendment of laws.
16. Short title.

**SCHEDULE**

**LAWS REPEALED OR AMENDED**

**PREAMBLE**

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

**PART I**

**INTRODUCTORY PROVISIONS**

Definitions.

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

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

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

"child" means any person under the age of eighteen years old;

"community of property" includes community of profit and loss;

"joint estate" means the estate of a husband and wife married in community of property;

"parents" shall include adoptive parents and "parental" shall have a corresponding meaning;

"property" means property of any description and includes liabilities attaching thereto;

"Savings Bank" means the Post Office Savings Bank controlled and managed by Namibia Post;

"separate property" means property of a husband or wife which does not form part of a joint estate.

Application of Act

2. (1) Parts II, III and V of this Act shall apply to all marriages registered in terms of the Marriage Act, 1961 (Act 25 of 1961) and all marriages recognized in terms of the Recognition of Certain Marriages

Act, 1991 (Act 18 .of 1991), irrespective of the date on which the marriage was entered into.

(2) Part IV of this Act shall apply to all marriages in community of property in terms of the Marriage Act, 1961 (Act 25 of 1961), irrespective of the date on which the marriage was entered into.

## **PART II**

### **ABOLITION OF HUSBAND'S MARITAL POWER**

Abolition of husband's marital power.

3. (1) The common law rule whereby a husband acquires a marital power over the person and property of his wife is hereby repealed.

(2) Any marital power which a husband had under the common law over the person and property of his wife immediately before the commencement of this Act is hereby abolished.

(3) The abolition of the husband's marital power in terms of subsection (1) shall not affect the legal consequences of any act or omission or fact existing before such abolition.

Effects of abolition of the husband's marital power.

4. The effect of the abolition of the husband's marital power shall be to abolish restrictions which the marital power places on the legal capacity of a wife, including but not limited to the capacity

- (a) to register immovable property in her name;
- (b) to contract and litigate in her own right;
- (c) to act as an executor of a deceased estate;

- (d) to act as a trustee of an insolvent estate;
- (e) to act as a director of a company;
- (f) to act as a surety.

5. (1) The position of the husband as head of household under the common law is hereby abolished.

Abolition of husband's  
head of household status

(2) Wife and husband shall henceforth have equal rights with respect to all major decisions affecting the family.

### **PART III**

#### **ABOLITON OF OTHER INCIDENTS OF INEQUALITY OF MARRIED WOMEN**

Wife's domicile  
of choice

6. (1) The domicile of a married woman shall, instead of being the same as her husband's by virtue only of the marriage, be ascertained by reference of the same factors as in the case of any other individual capable of choosing an independent domicile.

(2) The domicile of any child of a marriage shall be his or her parental home, if he or she resides with one or both of her parents, or otherwise, the place with which he or she is most closely connected;

7. The father's natural guardianship over the children of the marriage at common law is hereby modified to confer natural guardianship upon both parents jointly.

Joint natural  
guardianship of mother  
and father

### **PART IV**

EQUAL STATUS OF SPOUSES MARRIED

IN COMMUNITY OF PROPERTY

8. A wife and husband who are married in community of property shall have equal powers with regard to -

Equality of spouses in regard to joint estate.

- (a) the disposal of the assets of the joint estate; and
- (b) the contracting of debts for which the joint estate is liable;  
and
- (c) the administration of the joint estate;

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

9. A spouse married in community of property may perform any juristic act in respect of the joint estate without the consent of the other spouse, subject to any restrictions imposed under this Part.

Acts of spouse requiring other spouse's consent.

10. (1) Subject to this section and sections 11 and 12, a spouse married in community of property shall not, without the consent of the other spouse -

- (a) alienate, donate, dispose of, purchase, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate ; or

- (b) enter into any contract for the alienation, donation, disposal, purchase, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate ; or
- (c) alienate, donate, cede, dispose of or pledge any shares, stocks, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or similar assets forming part of the joint estate; or
- (d) as a credit receiver, enter into a credit agreement as defined in the Credit Agreements Act, 1980 (Act 75 of 1980); or
- (e) enter into a contract for the purchase of movable property whereby the price is payable in instalments; or
- (t) bind herself or himself as a surety; or
- (g) alienate, donate, cede, dispose of or pledge any livestock, jewellery, coins, stamps, paintings or any other assets forming part of the joint estate and held mainly as investments; or
- (h) institute legal proceedings against another person, except .  
legal proceedings -
  - (1) in respect of her or his separate property; or
  - (2) for the recovery or damages, other than damages for patrimonial loss, by reason of the commission of a delict against her or him; or

(3) in respect of a matter relating to her or his profession, trade, business or occupation;  
or

(i) alienate, donate, dispose of, pledge or otherwise burden any furniture or other effects forming part of the common household.

(2) A spouse may, in the ordinary course of her or his business, trade or occupation perform any act referred to in paragraphs (c) to (e) of subsection (1) without the consent of the other spouse.

(3) Notwithstanding the restrictions contained in sub-section (1)(c) a spouse 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 her or his name at a building society or bank; or

(ii) building society shares registered in her or his name;

(4) (1) Deeds or other documents requiring registration in terms of the Deeds Registry Act, shall be executed by both spouses or shall be executed by one spouse with the written consent of the other spouse;

(2) Consent by a spouse to the other spouse's acting as a surety shall be in writing.

(3) Consent required of either spouse in all other cases shall be evidenced by

- (a) a writing; or
- (b) an oral agreement.

(5) Consent required for transactions referred to in paragraphs (b) to (e), (g) and (i) of sub-section (1) may be ratified within a reasonable time after the transaction or contract concerned.

Power of court to dispense with spouse's consent

11. If a spouse withholds consent required in terms of section 10, or if that consent cannot for any other reason be obtained, a court may give the other spouse leave to enter into and carry out the transaction or contract concerned 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.

Consequences of act performed without required consent.

12. (1) If a spouse enters into a transaction or contract with another person without consent required in terms of section 10 or leave granted in terms of section 11, or in contravention of an order in terms of section 13, and -

- (a) that other person does not know and cannot reasonably know that the transaction or contract is being entered into without such consent or leave or in contravention of that order, as the case may be, the transaction or contract shall be deemed to have been entered into with the consent required in terms of section 10 or while the power of the spouse was not suspended in terms of section 13, as the case may be, subject to the rights of the non-consenting spouse in terms of subsection 3;
  
- (b) that spouse knows or ought reasonably to know that he will probably not obtain such consent or leave or that the power concerned has been suspended in terms of section 13, as they may be, and the joint estate suffers a loss as a result of that transaction or contract, an adjustment shall be effected in favour of the other spouse on the division of the joint estate.

(2) For the purposes of subsection (1), if it is proved that a spouse entered into a transaction or contract without consent required in terms of section 10, it shall be presumed unless the contrary is proved that she or he knew or ought reasonably to have known that she or he would probably not obtain the consent.

(3) If a spouse enters into a transaction or contract referred to in paragraphs (b), (c), (d), (e) (f) or (g) of subsection (1) of Section 10 without the consent required in terms of that section, subject to the rights of third parties at common law, such transactions shall be void if within 14 days of becoming aware of the transaction or contract the other spouse delivers a written notice of repudiation to that other person.

(4) A party to legal proceedings instituted by a spouse married in community of property may not challenge the validity of the proceedings on the ground of want of consent required in terms of paragraph (h) of subsection (1) of section 10.

(5) If a spouse married in community of property institutes legal proceedings without consent required in terms of paragraph (h) of subsection (1) of section 10 and costs in such proceedings are awarded against her or him, 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 should be recovered from the separate property, if any, of the first-mentioned spouse and, in so far as those costs cannot be so recovered, that they should be recovered from the joint estate, in which case the court may order that upon the division of the joint estate an adjustment shall be effected in favour of the other spouse.

Suspension of right of spouse.

13. If a court is satisfied that it is essential to do so for the protection of the interests of a spouse married in community of property,

the court may suspend for a definite or indefinite period all or any of the powers that the other spouse may exercise in terms of this Part, either in relation to all transactions and contracts or in relation to particular transactions or contracts, as the court may specify in its order.

Recovery of debts from joint estate.

14. Where a debt is recoverable from a joint estate, the spouse who incurred the debt or both spouses jointly may be sued therefor.

## **PART V GENERAL**

Repeal and amendment of laws.

15. The laws specified in the Schedule are hereby repealed or amended to the extent indicated in the third column of the said Schedule.

Short title.

16. This Act shall be called the Married Persons :Equality Act, 1994.

**LAWS REPEALED OR AMENDED**  
**(Section 21)**

Schedule 1	Schedule 2	Schedule 3
No. and year of law	Title of Law	Extent of repeal or amendment
Amendment of Act 24 of 1936.	The Insolvency Act, 1936 amended -	<p>(a) Amend section 3 by the insertion after subsection (2) of the following subsection</p> <p style="padding-left: 40px;">"(2a) A petition for the acceptance of the surrender of the joint estate of spouses married in community of property shall be made by both spouses jointly.;"</p> <p>(b) Amend section 9 by the insertion after subsection (1) of the following subsection</p> <p style="padding-left: 40px;">"(1a) A petition for the sequestration of the joint estate of spouses married in community of property shall be made against both spouses.;"</p>
Amendment of Act 47 of 1937.	Deeds Registries Act, 1937. Registration of immovable property in name of married persons.	<p>(a) The following section shall be substituted for section 17-</p> <p>"17. (1) Immovable property, real rights in immovable and notarial bonds which would upon transfer, cession or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, unless that transfer, cession or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of a partner in that partnership.</p> <p>(2) Every deed or other document executed or attested by a registrar or a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, other than a person acting in a representative capacity, shall -</p> <p style="padding-left: 40px;">(a) state the full names and marital status (married or unmarried) of the</p>

person concerned; and where he or she so request, also any former or maiden name and description of unmarried status as spinster, bachelor, widow, widower or divorcee.

- (b) where the marriage concerned is governed by the law of Namibia, state whether the marriage is in or out of community of property;
- (c) where the person concerned is married in community of property, state the full name of both spouses.
- (d) where the marriage concerned is governed by the law of any other country, state that the marriage concerned is governed by the law of that country.

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

(4) (a) If immovable property or any real rights forming part of a joint estate of spouses married in community of property is registered in a deeds registry in the name of either spouse, the registrar shall, on the written application of either spouse or a conveyancer on his or her behalf if he is satisfied as to the relevant facts, endorse on the personal registers and all or any title deed(s) of immovable property or real rights, lodged with the application, or if any title deed cannot for any reason be produced to him, only on the registry

duplicate thereof, the full names of the other spouse and the marital status.

(b) If any immovable property or any real right forming part of a joint estate of spouses married in community of property, which is registered in a deeds registry in the name of one spouse only, is transferred, ceded, burdened with any real or registerable right or if any real right is conferred therein, either one of the spouses, or a conveyancer on his or her or their behalf shall apply to the registrar for an endorsement in accordance with subsection (4)(a) above.

(c) A registrar shall record a change of marital status and any consequent change of name of a person in a deed or document filed in a deeds registry on application by such person, or a conveyancer on his behalf, accompanied by the relevant deed or document and proof to the registrar's satisfaction of such change of marital status. Subject to the provisions of section 45 *bis* (2).

(5) If any deed or document required, or permitted to be executed or registered in any deeds registry, or any deed or document produced in connection with any such deed or document, is executed by a person married in community of property, such person:

- (a) shall be joined and assisted by his or her spouse in such execution or production, or
- (b) shall produce the consent of his or her spouse to such execution, registration or production and the deed or document so executed shall make reference to the spouse's consent.

unless the assistance or consent of the spouse is in terms of this Act or on any other grounds deemed by the registrar to be unnecessary.

(6) (a) Immovable property, real rights in immovable property and notarial bonds may be transferred, cession or registration vest in the name of any person married in terms of a marriage of which the legal consequences are governed by the law of any other country.

(b) A person married in terms of a marriage of which the legal consequences governed by the law of any other country, shall

- (a) be joined and assisted by his or her spouse in executing any deed or document required or permitted to be registered in any deeds registry; or any deed or document produced in connection with any such deed or document;
- (b) shall produce the consent of his or her spouse to such execution, registration or production,

unless the assistance or consent of the spouse is in terms of this Act or on any other grounds deemed by the registrar to be unnecessary.";

- (1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of the surviving spouse or deceased spouse of two spouses who were married in community of property or in the name of the joint estate of such spouses, or in the name of both such spouses, and the surviving spouse has lawfully acquired the share of the deceased spouse in the property, lease or bond, the registrar shall on written application by the executor in the estate of the deceased spouse and by the surviving spouse save where the surviving spouse has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the deed of lease or on the bond that the surviving spouse is entitled to deal with such property, lease or bond, and thereupon he shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property, lease or bond. Provided that the title deed, lease or bond shall first be endorsed in compliance with section 17(4) where it is registered in the name of one spouse only.

(b) The following section shall be substituted for section 45(1):

- "(c) the said bond has been passed by the survivor alone or by both

spouses who were married in community of property, and a written consent (which shall be in duplicate, in the prescribed form and signed by the survivor and the legal holder of the bond) to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the survivor as sole debtor in respect thereof, is produced to the registrar together with the bond."

by the substitution for section 45(4) of the following section -

"(4) As from the date of the endorsement on the title deeds of the property in terms of subsection (1), the estate of the deceased spouse shall be absolved from any obligation secured by the bond and the survivor shall become sole debtor in respect thereof in the same manner *as* if he had passed the bond at that date and, if the bond is a bond to secure future debts, the immovable property thereby mortgaged will secure any further or future advances which are made by the mortgagee of the bond to the survivor."

(b) -by the substitution for section 45(2)(c) of the following section -

by the substitution for section 45(1) of the following section -

"45. (1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of one of two spouses or in the name of both such spouses who -

(a) were married in community of property but have been divorced, and the person in whose name such property, lease or bond is registered or, where such property, lease or bond is registered in the name of both spouses, one of them has lawfully acquired the share of her or his former spouse in the property, lease or bond; or

- (b) are or were married in community of property, and a court has made an order, in terms of which the property, lease or bond is; awarded to the person in whose name it is registered or, where the property, lease or bond is registered in the name of both spouses, to one of them;

the registrar may, on written application by that person, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property or on the lease or the bond that such person is entitled to deal with such property, lease or bond, and thereupon such person shall be entitled to deal therewith as if he had taken formal transfer or cession into her or his name of the share of the former spouse or her or his spouse, as the case may be, in the property, lease or bond.

*bis* (2) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of both spouses who -

Endorsement of deeds on divorce or division of joint estate.

- (a) were married in community of property but have been divorced, and such property, lease or bond accrues to both the former spouses in undivided shares in terms of the division of the joint estate;

- (b) are married in community of property and a court has made an order of division of goods, in terms of which the property, lease or bond is awarded to both spouses in undivided shares;

the registrar may on written application by any of the spouses, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property, or on the lease or bond, or if such deed, lease or bond cannot be produced by such spouse, on the registry duplicate thereof, that such spouses are entitled to deal with such property, lease or bond, and thereupon such spouses shall be entitled to deal therewith as if they had taken formal transfer or cession into their names of their respective shares in such property, lease or bond.";

- (c) by the deletion of section 94.



first- mentioned spouse resides, declaring the property (which shall be described in the order in such manner as to be identifiable) to be free from the control of the other spouse, and prohibiting the other spouse from dealing in any manner with such property.“;

- (e) by the substitution for paragraph (c) of subsection (4) of the following paragraph:

w(c) **A** spouse shall for the purposes of this subsection be deemed to have been deserted by the other spouse if the first mentioned spouse is living apart from the other spouse because -

- (i) of the other spouse's refusal to reside with the first-mentioned spouse; or
- (ii) of the other spouse's repeated assaults or other acts of cruelty inflicted on the first-mentioned spouse; or
- (iii) the other spouse is an habitual drunkard; or
- (iv) of the other spouse's refusal or neglect without sufficient cause to supply the first-mentioned spouse or the children from the marriage

with necessa-  
ries; or

(v) of the other  
spouse's de-  
tention in any  
prison, jail,  
or ~~other~~  
institution.";

(f) by the deletion from subsection  
5 of paragraph (a);

(g) by the deletion from subsection  
(5) of paragraph (b).

3. By the deletion from section 3 of the  
proviso.

4. The amendment of section 4 -

(a) by the deletion from subsection  
(3) of paragraph (b);

(b) by the substitution for subsection  
(4) of the following subsection:

"(4) Both parents of a minor  
shall consent to the marriage of  
the minor, unless one of the  
parents has been granted sole  
guardianship of the minor.";

(c) by the substitution for subsection  
(5) of the following subsection:

"(5) The court or a judge  
may, where a parent who is a  
sole guardian has appointed a  
guardian or custodian as provi-  
ded in paragraph (a) of  
subsection (3), upon the  
application of the other parent or  
of the guardian, as the case may  
be, made after the death of the  
testator, make such order in  
regard to the guardianship or  
custody of the minor as the court  
or judge may deem in the inte-  
rests of the minor.;

(d) by the repeal of subsection (7).

5. The amendment of the Ordinance by the  
insertion after section 4 of the following  
section:

"4A. During the duration of a marriage, both parents of a minor born from the marriage shall be entitled to joint guardianship and joint custody of the minor, unless the court directs otherwise in the interest of the minor."

Act 44 of 1957	Defence Act, 1957	The Amendment of section 78 of the Military Discipline Code set out in the First Schedule to the Act by the substitution of subsection (3) of the following subsection:
		<p>"(3) Whenever it appears to a convening authority or a court martial that, in the interest of good order or public morals or the administration of justice or reasons of security, a trial ought not to be conducted or continued in open court, the convening authority or the court may at any time either before the commencement or during the course of the trial, order that persons other than the accused, his counsel and the necessary court officials or that juveniles or other classes of persons, shall not be permitted to be present at the trial. •</p>
Act 25 of 1961	Marriages Act, 1961.	Amend section 26(1) as follows:
		<p>"(1) No boy or girl under the age of eighteen years shall be capable to contracting a valid marriage..."</p>
Act 81 of 1963	Births, Marriages and Death Registration Act	The amendment of section 10 by the substitution for subsection (1) of the following subsection:
		<p>"(1) In the case of any child born alive it shall be the duty of the mother and of the father of the child and, in the case of the death or absence or other inability of the mother and father, then of-</p> <ul style="list-style-type: none"> <li>(a) any person present at the birth; or</li> <li>(b) the occupier of the dwelling in which the child is born; or</li> <li>(c) the person having charge of the child; or</li> </ul> <p>within fourteen days after the birth, to give the prescribed notice or information thereof either to the registrar or assistant registrar concerned, or (if the child was born outside an urban area), to any justice of the peace or police officer:</p>

Provided that if the mother or father is resident in an area other than that in which the birth occurred, that mother or father may give the prescribed notice to the registrar in whose area her or his residential address is."

- |                |                                     |   |
|----------------|-------------------------------------|---|
| Act 23 of 1965 | Banks Act, 1965                     | <p>(a) By the substitution of section 23 of the following section:</p> <p>"23. A minor over the age of sixteen years may be a depositor with a banking institution and may without assistance execute all necessary acquittance and cede, pledge and borrow against and generally deal with her or his deposit as she or he thinks fit and shall enjoy all the privileges and be liable to all the obligations attaching to depositors. .;</p> <p>(b) by the insertion after section 23 of the following section:</p> <p>Joint Accounts.</p> <p>"23A. A banking institution/commercial bank shall not, upon application, refuse to open a joint account in the name of two applicants, regardless of their marital status."</p> |
| Act 66 of 1965 | Administration of Estates Act, 1965 | <p>(a) The repeal of section 17; and</p> <p>(b) the amendment of section 72 by the substitution for subparagraph (i) of paragraph (a) of the following subparagraph:</p> <p>"(i) by the parent of a legitimate minor, who has not been deprived, as a result of an order under subsection (1) of the said section 5 or subsection (1) of the said section 4, of the guardianship of such minor, or under section 60 of the Children's Act, 1960 (Act 33 of 1960), or section 58 of the Children's Ordinance, 1961, of his parental powers over him; or";</p> <p>(c) The deletion from section 85 of -</p> <p>(i) "<u>seventeen</u>"; and</p> <p>(ii) paragraph (b).</p>   |

Act 68 of 1969	Prescription Act, 1969	The amendment of section 3 by the substitution for paragraph (a) of subsection (1) of the following paragraph:
		<p>"(a) the person against whom the prescription is running is a minor or is insane or is a person under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section 4; or".</p>
Act 70 of 1970	Subdivision of Agricultural Land Act, 1970	<p>The amendment of section 3</p> <p>The amendment of section 3-</p> <p>(a) by the insertion after paragraph (b) of the following proviso:</p> <p>Provided that an undivided share in agricultural land may vest jointly in spouses married in community of property. Further provided that such share may only be transferred (a) by the spouses or from their estates jointly, or (b) by one spouse or his estate to the other spouse or his estate when the joint estate has been divided.</p> <p>(b) by the insertion after paragraph (c) of the following proviso:</p> <p>"Provided that a part of an undivided share in agricultural land may vest jointly in spouses married in community of property. Further provided that such part of an undivided share may only be transferred (a) by the spouses from their estates jointly, or (b) by one spouse or his/her estate to the other spouse or his or her estate when the joint estate has been divided"</p>
Act 61 of 1973	Companies Act, 1973	<p>The amendment of section 218 by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>"(b) a minor or any other person under legal disability;"</p>
Amendment of Act 93 of 1976.	The Registration of Deeds in Rehoboth Act, 1976.	22. The Registration of Deeds in Rehoboth Act, 1976, is amended -

**AMENDMENTS SHALL CORRESPOND TO  
THE CHANGES DEEDS REGISTRY ACT**

Registration of immovable  
property in name of married  
persons

Ordinance 13 of Rents Ordinance, 1977  
1977

The amendment of section 1 by the substitution for  
the definition of 'Lessee' of the following  
definition:

"Lessee" includes -

(a) in respect of business premises, the  
widow or widower of a lessee who  
rented the premises in his or her  
personal capacity, if such spouse was  
living with the deceased spouse at the  
time of the spouse's death, and is  
desirous of a continued occupation of the  
premises unless the lease agreement  
expressly or by necessary implication  
prohibits sublease, cession or assignment  
by the lessee;

(b) in respect of a dwelling -

(i) the widow or widower of a  
lessee if such spouse was living  
with the deceased spouse in the  
dwelling at the time of the other  
spouse's death;

(ii) the deserted spouse of a lessee if  
such spouse was living with the  
other spouse at the time of the  
desertion by the other spouse;

and is desirous of a continued  
occupation of the dwelling;".

**OR**

(b) in respect of a dwelling a sublessee or  
the widow or widower or deserted  
spouse of a lessee or sublessee who was  
living with the lessee at the time of the  
lessee's death or desertion. •.

Act 11 of 1980      Boxing and Wrestling Control  
Act, 1980

The repeal of section 13

Act 21 of 1980      Combating of Immoral Practices  
Act, 1980

The amendment of section 2 by the deletion from  
subsection (2) of paragraph (g).

Government Notice Regulations made under the AG  
No. 28, 1981 Public Service Act (Act 206,  
1980)

1. Definition of "family quarters" shall be revised as follows:

"resides with him or her"

2. Definition of "Household" by substitution for section (a) of "the spouse of an officer or employee; and/or"

And the repeal of section (b).

3. Repeal A14.
4. Amend K1 definition of "dependent" as follows:
  - (a) the spouse or any necessarily non-self supporting..."

5. Repeal K3.4(b).

6. Repeal K4.3.

Act 2 of 1986 Building Societies Act, 1986

The amendment of section 62 -

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

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

- (b) by the deletion of subsection (2).

Notes:

A series of horizontal dashed lines for writing notes.

