Carolyn A. Bridge.

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I. INTRODUCTION

Farming has been the traditional way of life in New Zealand since the time of the early European settlers. Extensive sheep farming became the norm, to be followed by dairy and cattle farming, mixed cropping and horticulture. Agriculture today provides more than eighty percent of New Zealand's export earnings, and so New Zealand's farms, their production and management are of vital importance. [1] The farm has always been typically a family business. The farmer has carried the bulk of the physical and managerial work, while the farmer's wife has normally been engaged in the care of the children, the running of the household, and participating generally in work around the farm. It has been an established practice in New Zealand for sons of farmers to succeed to the family farm, often being rewarded for years of low-paid manual work by purchase of the farm on very generous terms. The purchase price was often secured by a mortgage to the father, with livestock and farm plant frequently acquired also by a generous mortgage or Deed of gift. Such was the kind of family arrangement commonly entered into prior to the Matrimonial Property Act 1976.

This paper is concerned with the effect of the Matrimonial Property Act 1976 on farm properties. It will only deal with those cases in which the farm itself, having been ascertained matrimonial property [2] has fallen to be divided between the spouses as the balance of matrimonial property under section 15.

II. BACKGROUND TO THE CASES

a. The broad scope of the Matrimonial Property Act 1976:

The Matrimonial Property Act 1976 is "social legislation of the widest general application" 3 and provides in its long title for

the "equal contribution of husband and wife to the marriage partnership." Under the 1963 Act [4] the concern was for tracing contributions to specific items of property, but the object of the present legislation in assessing only contributions to the marriage parnership itself, is an entirely new concept. The idea and meaning of contribution has been extended to cover all those elements of family and marital support set out in section 18 of the Act. The eight categories in section 18 have attempted to give wives the recognition that was often lacking under the old legislation and section 18 (2) goes so far as to provide explicitly that a contribution of a monetary nature shall not be presumed of greater value than a non-monetary contribution. The underlying bias of the Act is one of equality, based on the assumption that parties to a marriage contribute equally to the partnership. If the partnership breaks down solutions are needed and here the Act declares in advance the basis upon which matrimonial property will be divided at the end of a marriage.

The broad scope of the Act provides firstly that the spouses share equally in the matrimonial home or homestead, and family chattels. Section 12 which provides for the division of a homestead is especially relevant to farms, and operates in principle, in the same way as section 11. [5] Very often the farm homestead and its immediate environs cannot be split off from the farm land and become a separate entity capable of being sold. For such a case, section 12 provides that the spouses share equally in a sum of money which represents the equity in the homestead. Having divided the homestead and chattels, the Act provides secondly for the husband and wife to share equally in the balance of the matrimonial property under section 15. It is only this property with which the present paper is concerned.

While the Court of Appeal in Reid v Reid [6] recognised that the Act is part of the "wider legislative purpose of ensuring the equal status of women in society" the legislative policy has not always been so altruistically interpreted. In Baddeley v Baddeley [7] Mahon, J. stated that the Act gives

> every wife the right to leave her husband and to claim thereafter one half of the value of a business which he himself built up and maintained. She may leave him for the sole purpose of starting a new life with another man, but the right to claim one half of the business assets of her husband remains unaffected.

With respect, such an interpretation is not entirely fair. The Act does provide for cases of unequal sharing, and a certain amount of judicial discretion still exists [8] to manipulate section 15 in such a way as to "remedy any injustice" [9] which may have occurred in the categorisation of the property. [10]

b. Sections 15 and 18

Section 15 is concerned with any matrimonial property other than the matromonial home or homestead and family chattels. In this paper the matrimonial property under examination consists of the farm property, or profits from the sale of those farms, livestock, and often other items of property such as farm vehicles. Section 15 (1) provides that each spouse shall share equally in the matrimonial property "unless his or her contribution to the marriage partnership has clearly been greater than that of the other spouse". The first step the Court must take is to determine whether one spouse's contribution has clearly been greater. The onus is on the spouse claiming unequal sharing to establish a greater contribution. [11] If the onus is discharged section 15 (2) provides the second step in the inquiry; "the share of each in the matrimonial property... shall be determined in accordance with the contribution of each to the marriage partnership." The apportionment of shares is thus a matter for the Court. [12]

Section 15 must be read with section 18 which lists the different categories of contributions available to be considered by the Court. Section 18 (1) lists the care of children and household duties, the provision of money and property, payments and services in respect of property, the foregoing of a higher standard of living, and the giving of support to the other spouse, as contributions. No special weight can be given to any one contribution. Woodhouse J. makes particular mention of the "hypnotic influence of money" [13] in Reid v Reid and says that the true importance of the contribution of spouses to their marriage partnership cannot "be estimated against the curious medium of money". [14] Although section 18 (2) gives an explicit direction that contributions of a monetary nature are not presumed to be of greater value than contributions of a non-monetary nature, the acquisition of property is still given substantial weight in some cases under the 1976 Act.

c. The Comparison of Contributions

Whereas the old law was concerned with comparing contributions to particular pieces of property, the 1976 Act is involved in the more difficult task of comparing unlike things. The tangible and easily measured contributions of income and property acquisition must be compared with the more intangible performance of child care and household duties. The marriage partnership itself is the focal point of the inquiry, with an evaluation made according to the total achievement of each spouse to the marriage. The concern is for the "quality and significance to the marriage partnership of the total achievement. It is the coherent contributions for the marriage itself that is the test..." [15] In assessing the respective contributions of the husband and wife in Reid v Reid, the Court of Appeal was obliged to carry out the difficult task of comparing an essentially non-monetary contribution, with a very large contribution in the form of provision of money and acquisition of matrimonial property. Woodhouse J. considered the contributions of both spouses in the broadest possible way, considering their achievement over the whole span of a marriage of twenty-one years. The husband built up a thriving commercial business and accumulated significant capital assets, while the wife balanced this effort on the home front with her duties as supportive wife and mother to four children. In comparing the husband's achievements with the twenty-one years of assistance, support and child-rearing by the wife, the Court had regard to these services on the home front freeing up the husband to exercise his talents for the benefit of the marriage partnership. Had it not been for the extraordinary commercial skill and enterprise of the husband Woodhouse J. had no doubt that his decision would have been "equality in terms of the statutory presumption". [16] However the Court of Appeal found Reid a case for unequal sharing [17] "in essence because the husband was unusually successful in finding ways of harnessing his considerable latent talents." [18]

The weighing up of total contribution in Reid illustrates the recognition the Act gives to the efforts of one spouse in the home being intended by both spouses to free the other for work outside the home. This point underlies the presumption that equal sharing will be the norm.

Departure from the norm can only be justified in one of two ways: "Inequality in the quality or quantity of effort with which the objects of the partnership are pursued" [19] or as Richardson J. stated in Reid, only where one spouse has "contributed more overall in qualitative or quantitative terms to the marriage partnership...through his or her own positive efforts". [20] The second justification for departure from the norm only exists when a greater contribution is made through the commitment to the marriage of previously separate property, or as Fisher succinctly puts it "the introduction of capital to the partnership in the form of matrimonial property from a source external to the operation of the partnership." [21]

d. Mathematical breakdown of the type of division achieved under section 15

For the purposes of this paper all the High Court decisions reported in the four volumes of Matrimonial Property Act Cases have been examined, together with two Court of Appeal cases. However only those cases where the farm or assets from the sale of a farm have been classified matrimonial property, and have then fallen to be divided according to section 15 are discussed here. Thirty-six such cases have been decided in the High Court or Court of Appeal under the 1976 Act, as at September 30th 1981. In nineteen cases equal sharing in the farm property was awarded, while in seventeen cases unequal sharing resulted. Because so many factors are involved in assessing contributions to any one particular marriage partnership, trends are almost impossible to guage. Of the six cases in volume I M.P. Cases, five awarded unequal sharing. This could possibly be seen as the equal sharing presumption not having been fully implemented, yet even after Reid these particular cases may still have resulted in unequal sharing. Reid v Reid has generally had the effect of reaffirming the presumption of equal sharing, yet overall, the number of cases awarding equal shares has not really increased. Of the eleven cases reported in Volume two M.P. Cases, only three resulted in unequal sharing, while of the eleven cases reported in Volume four M.P. Cases (after Reid) five resulted in unequal sharing. Only by examining the cases in groups relating to how the property was acquired, the special contributions present, and the special talents exhibited by

one spouse or the other, is it possible to realise how the Act is being interpreted and what, if any, trends are being developed.

III. THE LAW IN OPERATION

a. The Estate Planning Cases - unequal division.

Cases falling under this heading, are those where the husband had acquired the farm property on advantageous terms from his family, or, if the purchase was not made on generous terms was at least made possible because of the father/son relationship. In the "estate planning cases" [22] Baddeley, Bleakeley, Manuel, Forde and White, the norm of equal sharing was displaced with the wife in each case receiving only 25 per cent of the matrimonial property. What factors displaced the presumption of equal sharing in each of these cases?

In Baddeley [23] where Mahon J. awarded the wife a 25 per cent share in a sheep and cattle station, "simple concepts of justice" [24] have been the governing criteria in departing from equal sharing. Mr. Baddeley senior had assigned to his son for estate planning purposes, a substantial interest in the family farm, and a mortgage was executed in his favour by the son. To this end the married couple lived on a small income for fifteen years and both "the husband and wife were led to believe that in return for efficient farm management, the husband would attain a farm property of his own through the medium of his father." [25] The farm was acquired by the husband one year before the marriage breakdown. In the light of those facts Mahon J. proceeded in his judgement from an initial assumption that the husband's contribution to the marriage partnership was clearly greater. The wife's contributions however were assessed, and she was found to be "a conscientious wife, housekeeper and devoted mother", [26] the couple had lived on a modest income throughout their married life, and "in terms of the marriage partnership she made a substantial contribution." [27] In terms of the section 15 requirements the wife could hardly have done more, yet the husband's contribution was assessed as three times greater than hers. Contributions to the marriage were not compared, but rather the case was

based on the clear assumption that the husband's greater contribution lay in the physical burden of labour the farmer alone carries out, plus the substantial advance the father gave his son in order to acquire an interest in the farm property. It was with reluctance that Mahon J. awarded a quarter share to the wife, and he concluded that the consequence of such division could mean "the destruction of an enterprise to which he (the husband) has devoted the whole of his working life." [28] The judgement concludes almost with an apology, "I can only repeat that this is a consequence directed by Parliament, not by me." [29] Baddeley's case reflects clearly the disquiet experienced by the Courts when faced with the conflicting claims of new social legislation and the practical realities of possibly forcing the sale of a farm.

While Baddeley did not explicitly regard the father/son relationship which enabled the farm to be acquired as a contribution under section 18, the judgement in Bleakley v Bleakley [30] specifically referred to the consequences of such a relationship as a contribution to the marriage partnership. The father in Bleakley sold half the farm to his son on most favourable terms; a transaction which Speight J. regarded as a contribution to the marriage partnership in terms of section 18 (1) (d). This sub-section provides for the "acquisition or creation of matrimonial property..." to be regarded as a contribution, and Speight J. recognised this as providing for other modes of acquisition of property apart from the provision of money. The gaining of matrimonial property "because of the particular characteristics of the husband and the part he played in entering into the transaction with his father..." [31] was considered to be a special contribution to the marriage partnership in terms of section 18 (1) (d). Speight J. stated "that the young couple would never have had the farm but for the father's generosity to the son and the special relationship which existed between them," [32] and to this extent concluded that the husband's contribution had clearly been greater, thus displacing the prima facie presumption of equality.

The judgement refers to the care of the children and household duties on the part of the wife as contributions under section 18, yet states that such work is "largely rewarded in the sharing of the matrimonial home and is of minimal significance to the balance of matrimonial

property." [33] It is submitted that this contention is unsupported by the legislation; section 15 specifically requiring the fixing of shares in the balance of the matrimonial property to be "determined in accordance with the contribution of each to the marriage partnership." Speight J. refers at the beginning of his judgement to the legislative move in the 1976 Act being away from contributions to property, yet, with respect, he himself indulges in the language of contribution to property. In fixing the respective shares of the parties, Speight J. stated that "the wife's contribution was minimal in respect of the matrimonial property," while the "husband's contribution to the marriage partnership, in relation to the matrimonial property is 75 per cent and the wife 25 per cent". [33a] Speight J. used the special status of the husband which enabled acquistion of a large proportion of the matrimonial property, as the over-riding factor in displacing equal sharing; yet again there is an underlying reluctance to force the sale or division of a farm, because of legislation which might not accord with the common view of justice when applied to the facts of such a case as Bleakley.

In Manuel v Manuel [34] the husband became the owner of a farm through a family settlement whereby he bought the interests of his two brothers. However, the significance of the family relationship to the acquisition of property was not given any significance by Moller J. Rather the husband was considered to have made a greater contribution to the marriage partnership in that he was "a very hard and conscientious worker and a very efficient farmer and businessman." [35] The Judge preferred the husband's evidence to that of the wife, and in assessing contributions for the purposes of section 15 looked at the exhaustive list of matters to be considered in section 18. These matters were not gone through explicitly, but the wife was considered "less successful than the average housekeeper" [36] and the Judge stated that he had given due attention to all aspects of contribution in arriving at a figure of 25 per cent to the wife.

The special status of the husband in relation to his father was given significance in Forde v Forde [37] where Roper J. weighed up several factors in assessing the contributions of the parties. Roper J. stated that "it was Mr. Forde senior's generosity in gifting "Rakahouka"

(first farm) which gave the couple their start. His later sale of "Mabel Bush" (second farm) on favourable terms enabled them to improve their lot." [38] This contribution coupled with the wife bringing nothing in the way of assets to the partnership, was the compelling factor in awarding unequal division.

How do these four cases square with the reasons put forward by Fisher and Richardson J. as the only reasons for displacing the equal sharing presumption? [39]

In the writer's view Manuel is the one case where unequal sharing was awarded on the basis of 'a greater positive effort' [40] by the husband to the marriage partnership. While he was a very efficient farmer, the wife's contribution was less than average. No criticism however, is forthcoming about the wife's domestic contribution in Bleakley or Forde, while in Baddeley the wife's contribution on the home front was considered substantial. Therefore in Richardson J.'s qualitative or quantitative terms there was no greater effort on the part of one spouse to the marriage partnership. However the special relationship existing between father and son which gave rise to the acquisition of substantial matrimonial property could be considered a contribution "from a source external to the operation of the partnership." [41] In Bleakley and Forde the nature of the acquisition of property was explicitly recognised as a contribution, so as to accord with Fisher's view.

b. The Estate Planning Cases - equal division

In Cook v Cook [42] Vautier J. adopted the view of Speight J. in Bleakley that "the acquistion of the farm at some undervalue is properly to be regarded as a contribution made by the husband." [43] However Vautier J went on to regard this contribution as not yielding a great deal in monetary terms, and when weighed against other contributions by the wife could not conclude that it called for unequal sharing. Rather he preferred to regard the husband and wife as "doing (no) more or less than each playing their respective parts in the operation of the farm." [44] Two factors emerge in Cook which were

considered sufficient to retain the norm of equal sharing. Although given acknowledgment, the special contribution was regarded only as a small monetary gain, rather than as the factor which enabled the couple to acquire a farm. The special contribution was therefore assessed on the monetary gain it yielded, section 18 (2) was applied, and the consequence was equal sharing. Vautier J. also looked closely at the contribution of the wife in Cook, particularly at the care she had to devote to a child with a physical handicap. The wife also had to "work hard in the way most wives of farmers in this country have to work." [44a] In comparing the contributions of the parties, having regard to section 18 (2), Vautier J referred in particular to a passage in the judgement of Woodhouse J. in Barton v Barton [45] ..."the onus involves a positive demonstration that the contribution is greater to a significant degree so that the disparity really stands out in the circumstances of the case." In light of this statement, and looking at the overall contribution to the marriage, Vautier J was "unable to conclude that the contribution of the husband to the marriage partnership has clearly been greater than that of the wife." [46]

The reasoning in Cook is a forerunner of that expressed in Reid v Reid, and is more in accord with the true spirit of the legislation, than for example, Baddeley. However one doubt still hovers in the writer's mind. The monetary gain in Cook was not very great, whereas in Baddeley, Bleakley and Forde the monetary gain was considerable. This gives the impression that the enquiry by the Court was directed towards contribution to assets rather than to the marriage partnership; the very fact of a relationship which gave rise to the acquisition of the farm in the first place is subordinate to the amount of monetary gain derived. This, despite section 18 (2) which prohibits the placing of greater value on monetary contribution. Would Cook have been decided differently if Mr. Cook senior had been more generous to his son?

A second estate planning case which accorded equal sharing was Scott v Scott. [47] Although coming after the Court of Appeal in Reid the facts of Scott are somewhat unusual and Reid is not referred to. The husband's father sold the family farm on very generous terms to the

husband and wife as tenants-in-common in equal shares. The wife was therefore said by Ongley J. to be "contributing to the income bearing capacity of the (farm) partnership her one half share of the farm land." [48] Ongley J. made the further point that the father as benefactor of the spouses must have intended that his daughter-in-law be half owner of the family farm lands, and he "would have been well aware of the vicissitudes of marriage and possible complications in relation to jointly owned property which might follow upon a divorce." [49] The Judge concluded that this joint ownership was 'highly fortuitous' to the wife but

> she was justified...in asserting that the benefit which she received by the transfer to her of an interest in the farm lands upon favourable terms was intended for her whether or not circumstances permitted her to enjoy it within the framework of the marriage. 50

Upon the basis of joint ownership, Ongley J. was unable to depart from equal sharing although he made the observation that "growing awareness of the effects of the legislation will probably cause the heads of farming families to arrange their affairs differently in future years." [51]

A case similar to Scott was Saxton v Saxton [52] where the wife was given an equal interest in the farm lands by means of a partnership agreement between the parties. The original gift from the husband's family was not considered a special contribution by the husband in light of the subsequent agreement. As in Scott an equal interest in the land resulted in equal sharing of the land on the breakup of the marriage. The holding of property in joint ownership was certainly fortuitous for both wives in these cases, for in light of the preceding estate-planning cases, had the legal arrangements been different in Scott and Saxton the wives may not have been treated as generously.

c. Estate Planning Cases decided after Reid v Reid

In Bleakley Speight J. referred to the difficulties which can arise in the interpretation of new legislation. In particular, he said

> we are still exploring and are as yet without appellate guidance on many of the difficult questions of interpretation, particularly on

> such matters as arise under section 18 as to what constitutes contribution, and what room there is for giving different weight in cases where there are a number of contributing factors. 53

In Reid v. Reid the Court of Appeal gave very clear guidance as to the interpretation and application of sections 15 and 18. [54] Since Reid two cases have come to the High Court, in which the matrimonial property having been acquired on advantageous terms from the husband's family, has fallen to be divided between the spouses on the basis of section 15.

White v. White's case [55] bears a close similarity in its facts to Bleakley. In considering the assistance the father gave his son in acquiring the farm land, Bisson J. in White found that "the father's assistance to the husband during the marriage...amounts to a substantial contribution by the husband to the marriage partnership under section 18 (1) (d) of the Act. [56] Bissen J. proceeded from this point based on the view of Speight J. in Bleakley and stated that "I would have considered their (the spouses') contributions equal except for the husband's contribution under section 18 (1) (d)." One interpretation of the special status contribution in the preceding cases is that the monetary gain derived from the relationship is of greater value as a contribution, than the fact of the relationship itself, even though it was the relationship which gave rise to the acquisition of the property in the first place. In White Bisson J. accorded precedence to the latter view, stating that,

> although...the husband did not have separate property at the time of the marriage...and although the husband did not acquire his interest in the farm land at an undervalue, it was nevertheless assistance from his family which enabled the husband...in the first place to acquire the farming livestock and implements and subsequently the land. 57

Bisson J. held that that father's assistance amounting to an on-demand interest-free debt was a contribution under section 18 (1) (d). The Judge also considered the contribution of the wife in the care of children and management of household duties finding that she had carried them out "practically unaided and satisfactorily. [58] She helped with the farm in a minor way, worked outside the home to bring in a little extra cash, and "not only played her full part as a wife and mother, but enabled the husband to devote practically the whole of his time and

attention to the farm." [59] The wife also made a contribution under section 18 (1) (g) in foregoing a higher standard of living than would otherwise have been available, and "went without to improve the husband's financial position." [60] However once the husband's contribution under section 18 (1) (d) was brought into play the "scales tip markedly in his favour." [61] The "great imbalance in the contribution of the parties" [62] led Bisson J. to find that the husband's contribution to the marriage partnership was clearly greater and that the wife's share of the matrimonial property should be fixed at 25 per cent.

The Court in White was obviously confident in asserting that the contribution by the husband to the marriage partnership was three times greater than that of the wife, despite her contribution being entirely worthwhile and adequate. Yet Woodhouse J. in Reid v Reid stated that

> It must surely be a striking situation if the Court could stand back and confidently assert against a competent and dutiful husband or wife that the achievement of the other for the marriage had been so remarkable that the spouse concerned had done for example twice as well. 63

Was the on-demand interest-free debt gained by the husband in White such a remarkable achievement as to render his contribution to the marriage three times more valuable?

The second case involving the acquistion of a farm on advantageous terms to come to the High Court since Reid v. Reid, was the case of Reid v Reid Greig J. [64] In this case the matrimonial property comprised a block of land which was obtained by the husband from his father some years after a first block of land had been gifted. Greig J. did not regard the position of the husband in relation to his father as the means by which the matrimonial property was acquired. Rather he looked at the "notional assistance" [65] of the father in the purchase of the second block of land, and primarily the husband's farming efforts which produced the concrete assets of the marriage. Although the husband's contribution was undoubtedly greater in money terms, Greig J. weighed this against the section 18 contributions of the wife. She was a dutiful wife and mother, did some work around the farm, and carried on a business outside

the home for some periods of the marriage. Complying with the meaning and application of section 15 and 18, in Reid v. Reid, Greig J. concluded that "giving due consideration to each contribution...the parties must share equally in the remainder of the matrimonial property."

The resolution of difficulties inherent in sections 15 and 18, particularly in respect to the weight to be accorded any one contribution, has not resulted from the appellate guidance offered by Reid. Two questions remain to be answered. Firstly, should the special status contribution be regarded as a contribution at all under section 18 (1) (d)? The contribution a son is able to give because of his family's generosity does not spring from his own efforts, but rather from good fortune in being the son of his father. This good fortune is also accorded a wife who marries one of these favoured sons, resulting in a fortunate couple being given a chance to acquire a farm, which in today's economic climate is impossible for most young people. However, on marriage break-up, the inquiry demanded by the Act is directed towards the marriage partnership. The favoured situation of succeeding to the family farm must certainly be a substantial contribution to the marriage, without which the married state would have been entirely different. The source of such a contribution is traceable directly to the husband's family and as such is a contribution brought by him to the marriage partnership. The acquisition of the farm has come from a "source external to the marriage" [66] and in the writer's view must be accorded due weight as a contribution, given the circumstances of the case.

The second question left unanswered since Reid is whether the special status will be regarded as a greater contribution due to the monetary gain involved, or because it occasioned the acquisition of property in the first place. Bearing in mind that section 18 (2) prohibits the presumption that a monetary contribution is of greater value than a non-monetary one, it is the writer's view that the second interpretation should be followed. The opportunity accorded by the special status which enabled acquisition of the family farm is a substantial contribution to the marriage, despite the extent of under-value granted by the father. It may be that on a weighing up of the contributions of both spouses the special status will not constitute a

clearly greater contribution, but in the writer's view it normally will. As a contribution to the marriage partnership it will be hard to equal by child care and household duties, unless as in Cook and Reid the Court views the contribution as not yielding much in monetary terms.

d. Advantageous terms arising from some other form of special status

Advantageous terms for the acquisition of a farm can come from sources other than some benefaction or family transaction. However these sources must come within the types of contribution listed in Section 18. In Denyer v. Denyer [67] the husband claimed a greater contribution to the marriage partnership in that as a Maori he was able to obtain a lease of Maori land on favourable terms, purchase the shares of other Maori owners, and finally purchase the freehold on favourable terms. Barker J. was thus faced with the question of whether an accident of birth constituted a contribution under section 18. He agreed that the "husband's Maori blood was at least an advantage to the parties; it helped the parties to obtain the lease and advantageous finance. It facilitated the buying of the freehold." [68] However the Court was unable to hold that being of Maori blood was a contribution; such a possible contribution was not listed in the statutory definitions under section 18 which the Court regarded as an exhaustive list. In support of this decision Barker J. held Denyer not to be comparable to Baddeley, Bleakley and Manuel which he distinguished as "estate planning cases." Section 18 (1) (d) states that a contribution can mean the acquisition or creation of matrimonial property, and under this provision the special status of a son in relation to his father was regarded as a contribution in Bleakley, if not as explicitly in Baddeley and Manuel. Being of Maori blood is no more or less an accident of birth than being the son of a farmer, and in the writer's view it is difficult to see why the husband in Denyer was not awarded the special status contribution.

The second ground adopted by the Court in Denyer for rejecting unequal sharing was the section 15 onus on the spouse claiming a greater contribution, to prove that greater contrubution. Barker J. considered the contribution of the wife to the marriage partnership; she cared for the children and performed household duties satisfactorily but "did not

do as much farm work as many farmers' wives have been known to do" [69] Yet the Court in Denyer concluded that the husband had not discharged the onus on him, and accordingly the matrimonial property was to be shared equally.

A second case where the husband's status enabled the acquisition of a farm on advantageous terms was Foss v. Foss [70] In this case the husband was a returned servicemen, and in 1944 was entitled to a rehabilitation loan. The parties married and purchased a "hard back country" farm with a 100 per cent rehabilitation loan. In Foss the wife's contribution was "of a high order"; living frugally, supervising the children's education through correspondence school, a good wife and mother, contributing monetary bequests she had received, and contributing to some extent to the farm work. In comparing contributions the Court gave due weight to the husband's incompetence in farm management, although it did not amount to "gross and palpable" misconduct under section 18 (3). Yet the Court awarded an unequal division of the farm property. White J. stated that "where the basic asset is a farm property owned and brought into the matrimonial property with a substantial equity by the husband, it will be rare for a wife to be able to claim half." [70a] The 100 per cent rehabilitation loan was undoubtedly a special contribution without which the couple would probably never have acquired the farm. However when the contributions of both spouses throughout a marriage of thirty years are compared, it is difficult to regard the loan as giving the husband a greater contribution to the marriage partnership. It is the writer's view that Foss could have been decided differently had it come to the High Court after the decision of the Court of Appeal in Reid. Woodhouse J.'s direction to look at the "quality and significance to the marriage partnership of the total achievement" [71] would surely have resulted in equal sharing in Foss.

Foss and Denyer are not easily reconcilable. Barker J. in Denyer and also in Black v. Black, [72] insisted that the expression 'clearly been greater' [73] had a real and distinctive meaning. He adopted the view of Somers J. in Barron v. Barron [74] who claimed that the "phrase means greater by a distinctive and real margin - one which compels recognition." In Reid v. Reid Woodhouse J. approved the

stance he took in Barton, and insisted on certainty and "a clear line of demarcation between those cases that will automatically result in an equal division of property and the remainder which are affected by the proviso." [75] In requiring a clear disparity in contributions in order to displace the norm of equal sharing it is the writer's view that Barker J. in Denyer took an approach preferable to that taken in Foss.

e. Cases in which the matrimonial property has stemmed from previously separate property.

In Reid v. Reid, Richardson J. stated that

> The rationale for treating the provision by one spouse of previously separate property as an additional contribution is that the separate property did not itself result from the operations of the marriage partnership. [76]

If the matrimonial net is cast wide under section 8 (e) recognition will be given to contributions of previously separate property in order to balance any possible injustice in the classification. It appears to the writer that a certain amount of discretion is contemplated in the application of section 15. This was specifically noted by Hardie Boys J. in Bowen v. Bowen [77] where he stated that "I imagine the legislation intended that where there was injustice it could to some extent be dealt with under section 15." This comment was made with regard to the "injustice" of section 9 (3) in Bowen; the capital which provided the original farm, the increase in value of which was classified as matrimonial property, was regarded as of such significance as to replace equal sharing. The wife was only responsible for a small part of the increased value of the property.

In Davidson v. Davidson [78] the husband came to the marriage with $4,000 cash, and a farm property acquired subject to a large mortgage debt. Because Chilwell J. did not regard the property as having been "acquired" [79] until the mortgage debt was fully repaid, the farm was classified as matrimonial property. In light of this decision Chilwell J. thought it "just to give the husband credit for the two amounts which total $12,000," [80] and the Court awarded 60 per cent of the matrimonial property to the husband. Unequal sharing was thus awarded in

Davidson because the matrimonial net had been cast wide and had caught previously separate property, a situation which the Court wanted to recognise despite the initial classification.

An award of 60 per cent was also made to the husband in Searle v. Searle.[81] In this case the matrimonial property was the surplus arising from the sale of a farm; a farm acquired from the husband's family three months after marriage. Rather than considering the husband's status in relation to his family and subsequently the farm, as a special contribution, Cook J. directed his inquiry more to the work the husband had done on the farm prior to the marriage. The husband had spent twelve years prior to his marriage working to improve the family farm. He had financed developments on the farm while earning his own living, provided his own labour for work on the farm, and, by the time of his marriage the improvements directly attributable to his efforts exceeded $3,000. On the basis of such effort by the husband the Court regarded his contribution as "inevitably greater." It is in accord with justice and with Reid v. Reid that such a gain to the matrimonial property, achieved before marriage, should be given due recognition.

The Court of Appeal had occasion to consider the extent to which pre-marital property created a clearly greater contribution by one spouse in Maw v. Maw.[82] The pre-marital assets acquired by the husband consisted of a farm property which he owned with his brother as tenants in common in equal shares. The two brothers were farming in equal partnership before the marriage and although this farm was classified by the Court as separate property, two further farms were acquired after the marriage by the partnership. These two farms held by the partnership were classified as matrimonial property within the meaning of section 8 (e) and fell to be divided under section 15. The Court of Appeal unanimously found the husband's contribution to have been greater, and this conclusion "largely rests upon the powerful impetus or stimulant given to the prosperity of the marriage partnership by the husband's pre-marital interest in the farming partnership."[83] The pre-marital asset became the foundation of the subsequent acquisitions and although the wife contributed adequately in all the ways she could under section 18, Richardson J. found that the husband's contribution was "a dominating

consideration...the springboard which enabled (the partners) to acquire the two further blocks of land." [84] "That was a major and significant contribution...(and) ranks for special consideration over and above regular contributions made in the course of the operations of the marriage partnership." [85] The Court of Appeal in Maw increased the wife's contribution from 20 per cent to one third, stating that the High Court decision "given relatively early in the history of the judicial administration of the Act (gave) too much weight...to the property position achieved by the husband before the marriage." [86]

In the writer's view the Court of Appeal's change was a correct one. A fine balancing is evident between the wife's very adequate contribution, and the husband's substantial property position coupled with his ordinary contribution as a farmer. The wife's achievement must be duly recognised, as it was by the award of a third of the property. To have awarded her half of this matrimonial property which had so largely sprung from a source external to the marriage partnership would not accord with the spirit of the legislation, which requires a just division.

Three further cases in 1981 confirm the view of Richardson J. in Reid v. Reid that although the matrimonial net may be cast widely under section 8 (e) this is balanced by the recognition of contributions of previously separate property. Bowen as already discussed was one of these cases, together with Best v. Best [87] and Cormack v. Cormack. [88] In Best the matrimonial property was acquired from the proceeds of the sale of an orchard and dairy-farm which had been the husband's separate property prior to marriage. The husband's contribution was considered to have been clearly greater in that he "provided the foundation of the matrimonial assets." [89] One aspect of Cormack directly comparable to Foss v. Foss was the provision by the husband of a farm acquired by a 100 per cent rehabilitation loan. Cook J. claimed that the value of the loan must not be under-rated, but unlike Foss, the original farm in Cormack provided a property base on which the husband was able to build. This contribution, coupled with the sound and prosperous business the husband built up, was sufficient to displace the equal sharing presumption.

f. Cases in which the contribution of the wife has clearly been greater:

So far in this review, all cases for unequal sharing have been in favour of the husband. However two cases have accorded the wife a clearly greater contribution to the marriage partnership, and hence a greater share in the matrimonial property. The first of these was Godfrey v. Godfrey [90] which although awarding unequal sharing, did not give the parties an overall percentage distribution. Rather, certain items of matrimonial property were vested in one spouse or the other. In weighing the respective contributions of the spouses, Jeffries J. had cause to apply section 18 (3). This subsection referring to misconduct has the effect of diminishing a spouse's contribution to the marriage partnership if that misconduct was "gross and palpable," and affected the value of the property to a significant degree. In this case the husband's misconduct related to the inexplicable disappearance of income from the farm. The husband was unable to account for money which had come into his possession, and coupled with a poor work record on the farm and as a husband, the application of section 18 (3) was called for. On the other hand the wife made many positive contributions. She provided the matrimonial home from her own resources, a gift from her father supplied the farm land on which the husband could work, and a further loan from the father purchased entirely another block of land. Besides the relationship with her father which enabled the acquisition of further land and the initial injection of property into the marriage, Mrs. Godfrey also contributed to the marriage partnership by the rearing of five children and making a substantial contribution to the farming operation. In awarding her a substantial proportion of the property, the Judge made explicit reference to the property being for her and her children, rather than for her alone, although no property was settled in the names of the children under section 26 (1). Similarly in Owens v. Owens [91] Greig J. made this same point explicit. After claiming that Mrs. Owens' contributions to the marriage partnership had clearly been greater he stated that "the order I will make, although nominally in favour of the wife is to take into account the position of the children and the regard that has to be had for them." [92] Jeffries J. in Godfrey referred to this as supporting the family as a group and suggested that as Mrs. Godfrey had been generously treated by her family "she would understand

her obligations with her children." [93] Similarly Mrs. Owen and her family had provided the original capital which set the parties up, and Mrs. Owen then proceeded to rear the family and do more farming duties than a wife normally does. Although section 18 (3) was not applied in Owen, the husband's farming capabilities were "no more than adequate." [94]

The stipulation that both Mrs. Godfrey and Mrs. Owen retain only a life interest in the farm and must be mindful of their obligations to the chidren is interesting. No such requirement has been made where the husband has retained the farm. Presumably the requirement is an indication of the Court's awareness that farm work is a man's work, and that if a wife is to retain the farm she must do so on trust for others. The practical realities of farm life appear to be important considerations for the Court.

g. The contribution of wives to work on the farm

The final group of cases to be discussed in this paper involve situations where no substantial pre-marital assets existed, no special family arrangements entered into, and no exceptional talents exhibited by either spouse. In the case of the average couple beginning married life with very few assets, the application of the section 18 scheme would proceed on the basis that the efforts of one spouse on the home front are intended by both spouses to free the other for work outside the home for the benefit of the marriage. Contributions from one spouse may be greater at certain times, but the legislative presumption is "that the respective contributions of the spouses...will be in balance at the end of the day." [95] Without any of the external factors so far discussed, the weighing and comparing of contributions will involve only those contributions made by the spouses in the regular course of their marriage partnership. Hence the contribution of a famer's wife to the work on the farm achieves importance.

Throughout the whole range of matrimonial property cases involving farms, a great deal of evidence has been directed towards the amount of farm work a wife has done. The Courts have tended to adopt

the presumption, correctly in the writer's view, that being a farmer's wife has naturally involved outdoor farm work. Even if a husband has denied the extent of farm work his wife has done, the Courts have still tended to give credit for such work. Unless direct evidence is given to the contrary as in Buckman v. Buckman, [96] the Courts have assumed that being a farmer's wife equates with assisting in farm work. The expectation exists that farm wives will do more work than town wives, yet the Courts are reluctant to categorise the contribution under any of the provisions of section 18. In the writer's view section 18 (1) (f) (i) would be the correct provision, providing as it does for the "performance of work or services in respect of the matrimonial property." Maybe in this respect the Courts have always tended to look globally at the marriage, rather than regarding section 18 as an exhaustive list.

Does the farmer's wife have to show that she contributed to the farm work in order to ensure equal sharing in the property? The amount of judicial thinking on this point would indicate that she does, yet an examination of all the High Court decisions has revealed that the Judges readily accept the presumption that a farmer's wife will have done farm work. Perhaps it is the result of this presumption that manifests itself in a farm wife receiving a larger financial award on marriage break-up than a town wife would normally expect. Of the six or so cases falling strictly into the present category, all resulted in equal sharing.

The actual extent of the farmer's wife's work has not been an over-riding factor in assessing contributions. In Reed v. Reed [97] the wife attended to milking and assisted substantially with the general farm work. However in Tickle v. Tickle [98] the Judge accepted that the wife "assisted her husband as much as she was physically and emotionally able." In both these cases the marriage partnership manifested itself in joint partnership agreements with regard to the farm, thus supporting the notion of equality between the spouses. However the facts of Reed indicated a substantial amount of physical work done by the wife, while the facts in Tickle suggested much less, yet both Judges gave the wife sufficient credit for her labours to maintain equal sharing. A good example of the Courts equating being a farmers' wife with doing farm

work, is Dyson v. Dyson.[99] Casey J. stated that "It needs little imagination to appreciate the efforts required of a wife on a town milk supply farm in bearing six children over the space of eight years." Moller J. was not quite as appreciative of the farmer's wife's role in Manuel[100] where he viewed the wife as "less successful than the average housekeeper." "She did very little indeed other than her domestic duties as a wife and mother." Moller J. thus indicated clearly that he expected the farm wife to do more than domestic duties, yet in the writer's view the lack of farm work here did not occasion the unequal sharing. Manuel was an estate planning case in which the husband's contribution would have been impossible to equal. Likewise the wife in Baddeley[101] made a substantial contribution to the farm work, but this was of little account when compared with the special contribution of the husband.

The farmer's wife is expected to assist on the farm, the Courts have assumed that she does, and have given her credit for it. All other contributions being equal, the farm work may assist the wife in ensuring equal sharing, yet if other special contributions have been made the wife's farm work will not generally balance the scales evenly.

The wife's work is not so much a specific contribution, as part of a total package. The inquiry is directed towards the marriage partnership and it is the totality of her contribution to that partnership that counts at the end of the day. If that overall contribution is lacking the wife will not be seen to have played her part in the marriage. Such a case was Buckman,[102] where, throughout a marriage of eleven years, the wife spent five of those years in and out of mental hospitals. Quilliam J. considered that she was unable to participate in the farm work itself, but more important was the reduction in quality of her general contribution to the marriage itself. On these facts Quilliam J. found that the husband's contribution was inevitably greater and awarded the wife one third of the matrimonial property.

CONCLUSION

In dealing with the division of farm properties under the Matrimonial Property Act 1976 the Courts have been faced with a conflict

between competing interests: on the one hand the claims of new social legislation with its strong bias in favour of equality, and on the other the practical realities involved in giving effect to that equality.

The farm situation is possibly unique in that equal division of the property will probably result in the sale of the farm. The sums of money involved are so large that this is usually the only course. The sale of a farm has the added effect however, of depriving the farmer of his means of livelihood, possibly destroying a venture his whole working life has been directed to, and depriving the children of the chance to succeed to the family farm. Against such consequences the Courts have striven to assert the principles of the new Act. They have given due recognition to the part played by women, not only as wives and mothers, but also as farmers' wives. The presumption that a farmer's wife will inevitably assist in farm work has been given credit by the Courts, while the notion of joint partnership has been given its literal interpretation.

In providing a "just division of the matrimonial property," [103] the Courts have had to weigh and balance these competing interests, and generally fair results have been achieved. The earlier cases were still property orientated to a certain extent, but it was inevitable that such a totally new concept as "contribution to the marriage partnership" would take time to become absorbed and truly interpreted by those administering the Act. However the injustice of equal sharing, particularly in the estate planning cases, and cases like Maw, was also apparent. To counteract the possible injustice of a wife leaving the marriage of her own accord and taking with her half the family farm, the Courts have eagerly sought for exceptions to the equal sharing presumption of section 15. In doing so they have relied heavily on the special status contribution and the discretion given by section 15 to counteract the effects of a broad classification of matrimonial property. Attributing significant weight to these types of contribution has, in the writer's view, been a fair way to tackle division of farm properties.

The share percentages awarded to wives since Reid v. Reid has tended to be an increase on the 25 per cent given in the early estate

planning cases, although White, coming after Reid, showed some reluctance to increase the share in this type of case. However the principles laid down in Reid gave much needed appellate guidance, and have resulted in the Courts coming more readily to a decision for equal sharing in appropriate cases.

Amongst the multitude of factors involved in each particular case, are the personal convictions and principles of the Judge himself. Whilst doing his utmost to balance the competing contributions, the broader competing interests often weigh more heavily with him on one side or the other. Some Judges have interpreted the Act strictly according to its spirit and tenor, while others have been unwilling to prejudice the farmer too much and have given greater deference to the broader practical realities.

FOOTNOTES

1. New Zealand Atlas. Government Printer 1976. p.44.

2. Section 8 defines matrimonial property.

3. Richardson J. in Reid v. Reid (1979) 1 NZLR 572 at p. 607.
1982 1 NZFLR 193 (P.C.)

4. Matrimonial Property Proceedings Act 1963.

5. S.11 provides for the equal sharing of spouses in the home and chattels. S.14 applies to both homes and homesteads.

6. Supra no. 3. Woodhouse J. p.580 1.43.

7. Baddeley v. Baddeley (1978) 1 MPC 10 at p.12.

8. Although Mahon J. said in Baddeley "in relation to the division of business assets...no discretion exists." p.13.

9. Hardie Boys J. in Bowen v. Bowen 4 MPC at p.22.

10. When property which arguably was separate property, has been caught within the matrimonial property net.

11. Supra no. 3. Richardson J. p. 609 1.25.

12. Ibid 1.34.

13. Supra no. 3. p.581 1.41.

14. Supra no. 3 p.582 1.13. However Cooke J. in Reid was not as forthright as this.

15. Supra no. 3. Woodhouse J. p.583 1.27.

16. Supra no. 3. p.589 1.45.

17. Although Cooke J. dissented on the percentage of shares to go to each spouse. He preferred 75% and 25% while Woodhouse J. and Richardson J. both approved 60% and 40%.

18. Supra no. 3. p.591 1.17.

19. Matrimonial Property Act 1976 Fisher para 473 p.100.

20. Supra no. 3 p.611 1.33.

21. Supra no.19.

22. Denyer v. Denyer (1979) 2 MPC 49 Barker J.

23. Supra no. 7.

24. Ibid p.12.

25. Idem

26. Idem

27. Idem

28. Ibid p.13.

29. Idem

30. Bleakley v Bleakley (1978) 1 MPC 31.

31. Ibid p.32.

32. Idem

33. Idem

33a Idem

34. Manuel v. Manuel (1978) 1 MPC 136.

35. Idem

36. Ibid p. 137.

37. Forde v. Forde (1978) 2 MPC 58.

38. Ibid p. 59.

39. Referred to on page 7.

40. Supra no. 3 p.611.

41. Supra no. 19.

42. Cook v. Cook (1979) 4 MPC 42.

43. Idem.

44. Idem.

44a Idem.

45. Barton v. Barton (1979) 1 NZLR 130.
p. 132 at l. 49.

46. Supra no. 42 p. 43.

47. Scott v. Scott 1980 3 MPC 162.

48. Idem.

49. Idem.

50. Supra no. 47 p. 164.

51. For example the use of trusts.

52. Saxton v. Saxton (1978) 2 MPC 166.

53. Supra no. 30.

54. The Privy Council decision did not alter this.

55. White v. White 4 MPC 213.

56. Ibid p. 214.

57. Idem. The underlining is mine.

58. Ibid p. 215.

59. Idem.

60. Idem.

61. Idem.

62. Idem.

63. Supra no. 3 p. 584 1.50.

64. Reid v. Reid (Greig J.) 4 MPC 171.

65 Idem.

66. Supra no. 19.

67. Denyer v. Denyer (1979) 2 MPC 49.

68. Ibid p.50.

69. Idem.

70. Foss v. Foss (1977) 2 NZLR 185.

70a. Ibid p. 187.

71. Supra no. 3.

72. Black v. Black (1977) 1 MPC 28. - equal shares were awarded in the farm here.

73. S. 15 (1).

74. Barron v. Barron (1977) 1 NZLR 454.

75. Supra no. 3 p. 586 1.25.

76. Ibid p. 611 1.36.

77. Bowen v. Bowen 4 MPC 22 at p.23.

78. Davidson v. Davidson (1978) 2 MPC 41.

79. S.8 (e) Interpretation of acquired not followed in Gallagher (1980) 3 MPC 59.

80. Supra no. 78 at p.44.

81. Searle v. Searle (1980) 3 MPC 164.

82. Maw v. Maw (1981) 1 NZLR 25.

83. Ibid p.33 1.45. Somers J.

84. Ibid p.32. 1.9.

85. Ibid 1.13.

86. Ibid p.28 1.29 Cooke J.

87. Best v. Best (1981) 4 MPC 14.

88. Cormack v. Cormack (1981) 4 MPC 45.

89. Supra no. 87 p.16.

90. Godfrey v. Godfrey (1978) 1 MPC 90.

91. Owens v. Owens (1981) 4 MPC 154.

92. Idem.

93. Supra no. 90 p.93.

94. Supra no. 91 p.155.

95. Supra no. 3. p.611 1.26.

96. Buckman v. Buckman (1979) 3 MPC 21.

97. Reed v. Reed (1978) 2 MPC 157.

98. Tickle v. Tickle (1978) 2 MPC 195.

99. Dyson v. Dyson (1981) 4 MPC 55.

100. Supra no. 34.

101. Supra no. 7.

102. Supra no. 96.

103. Long title to the Act.

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Due	Borrower's Name
27/2	N Jeffcoat
14/3	A Emerson
10 JAN 1985 CANCELLED	AM 3124/84
25/3	Shakespeare
25/3	E Mason
27/3	R Wal
31/3	JSE
1·4	6
2/4	
3/4	
4/	