

When a Property Relationships Agreement Decides Who Inherits

Rimmer v Wilton and the agreement that outlived its makers | October 2026

On 4 September 2026 the Supreme Court delivered a decision that changes how contracting out agreements work on death. *Rimmer v Wilton* holds that a couple can, by agreement, give up the right to inherit from each other on an intestacy, and that in this case a widely used "full and final settlement" clause, read with the rest of the document, did exactly that. If you have a contracting out agreement in a drawer somewhere, its effect on your estate may not be what you were told, or what you assumed.

The decision matters for two quite different groups of people, and the advice is close to opposite for each. For couples who wanted their agreement to settle everything, this is welcome confirmation. For a surviving partner who signed a similar clause expecting to still inherit, it may be an unwelcome surprise.

What happened

David Rimmer and Carolyn Wilton began living together in September 2000. They bought a property at Moumoukai Road, Hūnua, together, as tenants in common in equal shares. In June 2002 they signed a contracting out agreement under section 21 of the Property (Relationships) Act 1976.

The agreement did the usual things. It set out what was separate property and what was relationship property. It said that if they separated, the relationship property would be divided in proportion to what each had contributed. It gave the survivor a lifetime right to occupy and use the relationship property if one of them died. And it contained a clause saying the agreement was in full and final settlement of all claims each might have against the other under any statute, at common law or in equity.

Mr Rimmer died in March 2016. He left no will. His estate was about \$150,000 in cash and investments, some personal effects, and his half share of the Hūnua property, which was the main asset. He was survived by Ms Wilton and by his two adult children.

Ms Wilton was appointed administrator of his estate. She paid herself the cash entitlements the intestacy rules provide for a surviving partner, took his personal chattels, and transferred his share of the property to herself as administrator. She continued living in the house rent free until it sold in May 2021 for \$1.2 million.

Her position, in short, was that she was entitled to her own share of the house under the agreement, and to a further slice of Mr Rimmer's share under the intestacy rules, because he had left no will. The High Court agreed with her in 2023. The Court of Appeal agreed with her in 2025. The Supreme Court has now unanimously disagreed.

What the Supreme Court decided

The Court held that reading the life interest clause together with the full and final settlement clause made the position clear. Ms Wilton's entitlement to the property was limited to her own share, plus the lifetime right to occupy Mr Rimmer's share. She had no further claim on his half. The clauses together amounted to what the Court called a comprehensive disentitlement to a beneficial interest in the other party's share, and it was plain those terms were meant to regulate the position after death. A clause confirming that the agreement bound each party's executors and administrators further confirmed the point.

Three points from the reasoning are worth drawing out.

1. **You can contract out of inheriting on an intestacy.** The Court confirmed this is legally possible, endorsing the approach two earlier High Court decisions had taken but which had never been tested

at appellate level. Nothing in the Administration Act prevents it, and the Property (Relationships) Act positively contemplates couples defining what each will be entitled to on the other's death.

2. **Taking an intestacy entitlement is making a claim.** The Court of Appeal had thought a "claim" was an inapt description of an inheritance that simply arrives by operation of statute. The Supreme Court held that reading was unduly narrow. Receiving an entitlement under the Administration Act involves making a claim under that Act, so a promise not to make claims catches it.
3. **Intestacy is not a substitute for a will.** Ms Wilton argued the intestacy rules reflect what the deceased would probably have wanted, so the distribution to her should be treated much like a gift he had chosen to make. The Court rejected that. The intestacy rules apply precisely because the deceased failed to express any testamentary intention. Mr Rimmer expressed no intention to give her his share. On the contrary, he had agreed with her that she had no entitlement to it.

The Court was careful to say that none of this stops a couple choosing the opposite outcome. Mr Rimmer could have left his share to Ms Wilton by will, or transferred it to her while he was alive. Either would have worked, and receiving both an entitlement under the agreement and a gift under a will is not double dipping. He simply did neither.

What it means

A contracting out agreement can extinguish the survivor's right to inherit on an intestacy, so an agreement without a matching will may produce an outcome neither party intended, and neither is alive to correct.

What this means if you have a contracting out agreement

The honest answer is that you should have it looked at.

THE WORDING THAT DECIDED THIS CASE IS VERY COMMON

Full and final settlement clauses of this kind are common in New Zealand contracting out agreements, including agreements drafted long before anyone contemplated that they might govern an inheritance. It is worth being precise about what the Court did and did not decide. It did not hold that every full and final settlement clause reaches intestacy entitlements. It construed this agreement as a whole, and the settlement clause was only one of five provisions it relied on, alongside the recital, the life interest, the no-encumbrance clauses and the clause binding executors and administrators. What has changed is that a clause you may never have discussed can now do significant work in your estate, and whether it does depends on the rest of the document. In our experience, a vast majority of clients who have a contracting out agreement have no idea if (and how) their agreement applies on death.

AN AGREEMENT WITHOUT A WILL IS THE RISK CASE

This is exactly what happened here, and it took a decade of litigation across three courts to sort out. If your agreement is comprehensive and you die without a will, your partner may receive markedly less than you assumed, or markedly less than they assumed. If that is what you want, it can be confirmed properly. If it is not, only a will will fix it.

THE RISK RUNS IN BOTH DIRECTIONS

If you are the partner who brought assets into the relationship and wanted them preserved for your children, this decision helps you. If you are the partner who signed a full and final settlement clause on the understanding that you would still be provided for, it may not. Two people who signed the same document

can be affected in opposite ways, which is one reason a review is worth doing while both of you can still talk about it.

A SEPARATION AGREEMENT CAN HAVE THE SAME EFFECT

The Court saw no material difference between an agreement made at the start of a relationship and a settlement agreement made on separation. That has a consequence people rarely think about. If you separated, signed a full and final settlement, never formally dissolved the marriage, and never made a new will, your legal spouse would ordinarily still inherit a substantial share of your estate on an intestacy. After this decision, your settlement agreement may have extinguished that, or it may not, depending entirely on its wording. Either way it should not be left to chance.

SOME CLAIMS SURVIVE REGARDLESS

A contracting out agreement does not shut down every avenue. Long-standing law holds that the Family Protection Act 1955 cannot be contracted out of, so a surviving partner left without adequate provision may still be able to bring a claim. Claims based on promises made during a lifetime, and claims in equity where one partner contributed to property owned by the other, are unaffected. A court also retains the power to set a contracting out agreement aside altogether where giving effect to it would cause serious injustice, taking into account how long ago it was signed and how much has changed since.

What we suggest

Three practical steps, in order of urgency.

- **If you have an agreement and no will, deal with it now.** This is the combination that produced ten years of litigation in this case. It is also the easiest to fix.
- **If you have both, check they still agree with each other.** Agreements and wills are often made years apart by different advisers. A will that leaves your share to your partner and an agreement that says they have no claim on it are not obviously compatible, and the argument gets had after you are gone.
- **If you are administering an estate where a contracting out agreement exists, get advice before distributing.** In this case the surviving partner had distributed the estate on a view of the law that two courts endorsed and the Supreme Court then rejected. She was ordered to pay the appeal costs personally, and the Court directed that those costs were not to come out of the estate.

Notes for practitioners

Several strands of the judgment carry directly into drafting and estate administration practice.

BOILERPLATE NOW CARRIES INTERPRETIVE WEIGHT

The Court treated the recital reproducing section 21D(1)(c) as significant evidence that the parties intended the agreement to identify what each was entitled to on the death of the other. Recitals lifted from the statute are no longer inert. They should either be meant or removed.

SILENCE IS DANGEROUS IN BOTH DIRECTIONS

Because a general settlement clause can now extinguish succession entitlements, an agreement that does not address the point squarely creates risk whichever outcome the clients wanted. Precedents should require an express election: the agreement is exhaustive of entitlements on death, or it is a floor to which testamentary gifts may be added, or the parties expressly intend the survivor to take under both the agreement and any will or intestacy.

THE DISCLAIMER MECHANICS ARE NOT FULLY WORKED OUT

The Court held the agreement was either a pre-existing disclaimer preserved by section 81(6) of the Administration Act, or an enforceable contractual promise to disclaim under section 81(1), possibly enforceable by specific performance. It did not need to choose. Section 81 carries its own conditions, including a time limit running from the first grant, invalidity where the successor has entered into enjoyment of the interest, and invalidity where there is valuable consideration for the disclaimer. How those conditions interact with a covenant given for consideration in a contracting out agreement is untested. Where the intention is to disentitle, we suggest an express covenant to disclaim and an obligation to execute a deed on request, rather than leaving the estate to litigate the characterisation.

FORMAL VALIDITY IS NOW LOAD-BEARING ON DEATH

Where an agreement is void for non-compliance with the section 21F formalities, the contracting out of the intestacy likely rules cannot be severed. A certification defect therefore does not merely risk the property division, it also puts at risk the succession entitlement the agreement was meant to remove. The court may still declare that a non-compliant agreement has effect where the non-compliance has not materially prejudiced a party.

STANDING TO OBTAIN A GRANT

The Supreme Court expressly declined to decide whether Ms Wilton had been entitled to be appointed administrator at all. Previous decisions indicate that a partner who has contracted out has no beneficial interest and therefore no priority for a grant, and in one of such known decisions the grant was recalled where the agreement had not been disclosed. It may be wise to make inquiries as to whether a contracting out or settlement agreement exists as part of the pre-grant checklist for every intestate estate involving a surviving partner.

THE ELECTION UNDER SECTION 61 MATTERS LESS THAN IT DID

The Court accepted that where an agreement comprehensively determines entitlements to property, the option A or option B choice becomes less practically significant and may become irrelevant. Agreements under sections 21 to 21B bind on death regardless of which option is elected, and whether or not the deceased left a will. The deeming provision and the challenge provisions still operate.

REFORM IS LIKELY (EVENTUALLY)

The Court recorded that it shares the Law Commission's view that this area of the law should be reformed and made a point of saying the respondent should not be criticised for the position she took, given the complexity of the law and her success in both courts below. The Commission has previously proposed a statutory presumption on this very question. Agreements should be drafted so that they do not depend on the current default rules surviving.

Talk to us

We advise on contracting out and separation agreements, wills, family trusts and enduring powers of attorney. If you have an agreement, a will, or neither, and you would like to know where this decision leaves you, get in touch.

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Rimmer v Wilton [2026] NZSC 122, judgment of 4 September 2026. This article is general information about a recent decision and is not legal advice on any particular situation. The effect of any agreement depends on its own wording and on the circumstances in which it was made.