



**BERMUDA
1977 : 2**

LAW REFORM (HUSBAND AND WIFE) ACT 1977

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[31 January 1977]

[preamble and words of enactment omitted]

Interpretation

- 1 In this Act—
"court" means—

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- (a) in relation to any claim, matter or thing coming within the jurisdiction of a court of summary jurisdiction under the Magistrates Act 1948 [*title 8 item 15*], a court of summary jurisdiction;
- (b) in any other case, the Supreme Court;

"property" includes a thing in action;

"rules of court" means—

- (a) in relation to a court of summary jurisdiction, rules made under section 21 of the Magistrates Act 1948 [*title 8 item 15*];
- (b) in relation to the Supreme Court, rules made under section 62 of the Supreme Court Act 1905 [*title 8 item 1*].

Capacity of married women

2 Subject to this Act, a married woman shall—

- (a) be capable of acquiring, holding, and disposing of, any property; and
- (b) be capable of rendering herself, and of being rendered, liable in respect of any tort, contract, debt or obligation; and
- (c) be capable of suing and being sued, either in tort or in contract or otherwise; and
- (d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders,

in all respects as if she were an unmarried woman.

Property of married women

3 Subject to this Act, all property which—

- (a) immediately before 1 August 1977 was the separate property of a married woman or was held for her separate use in equity; or
- (b) belongs at the time of her marriage to a woman married after 31 July 1977; or
- (c) after 31 July 1977 is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were an unmarried woman, and may be disposed of accordingly.

Abolition of restraint upon anticipation

4 (1) No restriction upon anticipation or alienation attached, or purported to be attached, to the enjoyment of any property by a woman which could not have been attached to the enjoyment of that property by a man shall be of any effect after 31 July 1977.

(2) This section shall have effect whatever is the date of the passing, execution or coming into operation of the Act or instrument containing the provision by virtue of which the restriction was attached or purported to be attached.

Determination of questions between husband and wife as to ownership of property

5 (1) In any question between husband and wife as to the title to or possession of property, either party may apply by summons or motion in a summary way to the court, and the court shall have power to determine the rights of the parties raised by the application and make such order with respect to the property in dispute as the court thinks fit, in private if either party so require.

(2) Any power conferred by this section to make orders with respect to any property includes power to order a sale of the property.

(3) An application may be made under this section by either of the parties to a marriage notwithstanding that their marriage has been dissolved or annulled, so long as the application is made within the period of three years beginning with the date on which the marriage was dissolved or annulled; and references in this section or in section 6 to a husband or wife shall be construed accordingly.

Extension of section 5

6 (1) Any right of a wife under section 5 to apply to a court, in any question between husband and wife as to the title to or possession of property, shall include the right to make such an application where it is claimed by the wife that her husband has had in his possession or under his control—

(a) money to which, or to a share of which, she was beneficially entitled (whether by reason that it represented the proceeds of property to which, or to an interest in which, she was beneficially entitled, or for any other reason); or

(b) property (other than money) to which, or to an interest in which, she was beneficially entitled, and that either that money or other property has ceased to be in his possession or under his control or she does not know whether it is still in his possession or under his control.

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(2) Where, on an application made to a court under section 5, as extended by subsection (1) of this section, the court is satisfied—

- (a) that the husband has had in his possession or under his control money or other property as mentioned in paragraph (a) or (b) of that subsection; and
- (b) that he has not made to the wife, in respect of that money or other property, such payment or disposition as would have been appropriate in the circumstances, the power to make orders under that section shall include power for the court to order the husband to pay to the wife—
 - (aa) in a case falling within paragraph (a) of subsection (1), such sum in respect of the money to which the application relates, or the wife's share thereof, as the case may be; or
 - (bb) in a case falling within paragraph (b) of subsection (1), such sum in respect of the value of the property to which the application relates, or the wife's interest therein, as the case may be,

as the court may consider appropriate.

(3) Where on an application under section 5 as extended by subsections (1) and (2) of this section it appears to the court that there is any property which—

- (a) represents the whole or part of the money or property in question; and
- (b) is property in respect of which an order could have been made under that section (as so extended) if an application had been made by the wife thereunder in a question as to the title to or possession of that property,

the court (either in substitution for or in addition to the making of an order in accordance with subsection (2) of this section) may make any order under section 5 in respect of that property which it could have made on such an application as is mentioned in paragraph (b) of this subsection.

(4) The preceding provisions of this section shall have effect in relation to a husband as they have effect in relation to a wife as if any reference to the husband were a reference to the wife and any reference to the wife were a reference to the husband.

(5) In subsection (2)(b) "disposition" does not include any provision contained in a will, but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

Fraudulent investments with money of spouse

7 (1) If any deposit in a corporation receiving moneys upon deposit, or any investment in securities transferable only on the books of a corporation, has been made by a married woman by means of moneys of her husband without his consent, the court may, upon an application under section 5, order such deposit or investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband:

Provided that nothing in this Act shall give validity, as against creditors of the husband, to any gift, by a husband to his wife, of any property which, after such gift, continues to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this section had not been enacted.

(2) This section shall have effect in relation to a married man or a wife as it has effect in relation to a married woman or a husband as if any reference to a married woman or a husband were a reference to a married man or a wife and any reference to a wife were a reference to a husband.

Money and property derived from housekeeping allowance

8 (1) If any question arises as to the right of a husband or wife to money derived from any allowance made by either of them to the other for the expenses of the matrimonial home or for similar purposes, or to any property acquired out of such money, the money or property shall, in the absence of any agreement between them to the contrary, be treated as belonging to the husband and wife in equal shares.

(2) Nothing in this section shall have any retrospective effect so as to deprive a person of a substantive or vested right.

(3) Where a question such as is mentioned in subsection (1) arises in proceedings under section 5, the court shall be bound by this section, notwithstanding anything contained in that section.

Contributions by spouse in money or money's worth to the improvement of property.

9 (1) It is hereby declared that where a husband or wife contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of them has or have a beneficial interest, the husband or wife so contributing shall, if the contribution is of a substantial nature and subject to any agreement between them to the contrary express or implied, be treated as having then acquired by virtue of his or her contribution a share or an enlarged share, as the case may be, in that

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beneficial interest of such an extent as may have been then agreed or, in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of the husband or wife arises (whether in proceedings between them or in any other proceedings).

(2) Nothing in this section shall affect section 8.

Application of Wills Act 1840 to will of married woman

10 Section 20 of the Wills Act 1988 [*title 26 item 3*] shall apply to the will of a married woman made during coverture whether she is or is not possessed of or entitled to any property in her own right at the time of making it; and such a will shall not require to be re-executed or re-published after the death of her husband.

Abolition of husband's liability for wife's torts and antenuptial contracts, debts and obligations

11 Subject to this Act, the husband of a married woman shall not, by reason only of his being her husband, be liable—

- (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or
- (b) to be sued, or made a party to any legal proceedings brought, in respect of any such tort, contract, debt or obligation.

Actions in tort between husband and wife

12 (1) Subject to this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married.

(2) Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage, the court may stay the action if it appears—

- (a) that no substantial benefit would accrue to either party from the continuation of the proceedings; or
- (b) that the question or questions in issue could more conveniently be disposed of on an application made under section 5,

and without prejudice to paragraph (b) of this subsection the court may, in such an action, either exercise any power which could be exercised on an application under section 5 or give such directions as it thinks fit for the disposal under that section of any question arising in the proceedings.

(3) Provision shall be made by rules of court for requiring the court to consider at an early stage of the proceedings whether the power to stay an action under subsection (2) should or should not be exercised.

(4) This section shall not apply to any cause of action which arose, or would but for the subsistence of a marriage have arisen, before 1 August 1977.

Savings

13 (1) Nothing in this Act shall—

- (a) during coverture which began before 1 January, 1902, affect any property to which the title (whether vested or contingent, and whether in possession, reversion or remainder) of a married woman accrued before that date, except property held for her separate use in equity;
- (b) affect any legal proceedings in respect of any tort if proceedings had been instituted in respect thereof before 1 August 1977;
- (c) enable any judgment or order against a married woman in respect of a contract entered into, or debt or obligation incurred, before 1 August 1977, to be enforced in bankruptcy or to be enforced otherwise than against her property.

(2) Nothing in this Act—

- (a) renders the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this Act had not been passed;
- (b) exempts the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred, by her after the marriage in respect of which he would have been liable if this Act had not been passed;
- (c) prevents a husband and wife from acquiring, holding, and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt or obligation, in like manner as if they were not married;
- (d) prevents the exercise of any joint power given to a husband and wife.

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Repeal and amendment of provisions of Married Women's Property Act 1901

14 [omitted]

Commencement

15 [omitted]

[this Act was brought into operation on 1 August 1977 by GN 287/1977]