

First Session First Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 52 of 1976

P ✓ Am's No I 445
I 763
I 942
I 1041
III 839
III 929
A 1972 (25)
R. No III 907

[L.S.]

01) 85/77 (209)
1.6.77

AN ACT to consolidate and amend the law relating to the capacity, property and liabilities of married women, the liabilities of husbands, and matters connected therewith.

[Assented to 24th December, 1976]

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:—

1. (1) This Act may be cited as the Married Persons Act, 1976. Short title and commencement

(2) This Act shall come into operation on a date to be fixed by the President by proclamation published in the *Gazette*.

Inter-
pretation

2. In this Act—

“Judge” means a Judge of the High Court;

“property” means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, and any other right or interest whether in possession or not.

Capacity
of married
women

3. 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 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 a *feme sole*.

Property of
married
women

4. Subject to this Act, all property which—

- (a) immediately before the 1st of January, 1937 was the separate property of a married woman or held for her separate use in equity, or
- (b) belongs at the time of her marriage to a woman married on or after the 1st of January, 1937, or
- (c) on or after the 1st of January, 1937, is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were a *feme sole* and may be disposed of accordingly.

Undivided shares
and joint
ownership

5. A husband and wife shall, for all purposes of acquisition of any interest on or after the 1st of January, 1937, be treated as two persons.

Married
woman as sole
protector of
settlement

6. (1) Where a married woman would, if single, be the protector of a settlement in respect of a prior estate, then she alone shall, in respect of that estate, be the protector of the settlement.

(2) This section applies to disentailing assurances and surrenders made after the 31st of December, 1884.

7. (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 the commencement of this Act.

Abolition of
restraint upon
anticipation

(2) Subsection (1) shall have effect whatever is the date of passing, execution or coming into operation of the enactment or instrument containing the provision by virtue of which the restriction was attached or purported to be attached.

8. (1) This section applies where a husband or wife makes a contribution of a substantial nature in money or money's worth to the improvement of property in which, or in the proceeds of sale of which, either or both of them has or have a beneficial interest.

Contributions
of spouses to
improvement of
property

(2) The contributing spouse shall 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 beneficial interest of such an extent—

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

9. If any question arises as to the right of a husband or wife to money derived from any allowance made by the husband or wife 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 the wife in equal shares.

Money and
property
derived from
housekeeping
allowance

10. (1) If any deposit or investment shall have been made by a spouse by means of money of the other spouse without his or her consent, a judge may, upon an application under section 12, order such deposit or investment and the dividends thereof to be transferred and paid to the other spouse.

Investments
by wife
of money
of husband
without his
consent

(2) Nothing in this Act shall give validity as against the creditors of a person to any gift by that person to

his or her spouse of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of such person, or by any deposit or other investment of monies of such person made by or in the name of his or her spouse in fraud of his or her creditors; but any monies so deposited or invested may be followed as if this Act had not been passed.

Moneys payable
under policys
of insurance
not to form
part of estate
of the insured

11. (1) A married woman may effect a policy upon her own life or the life of her husband for her own benefit; and the same and all benefit thereof shall enure accordingly.

(2) Subject to subsection (3), a policy of insurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the money payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts.

(3) If it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid.

(4) The insured may, by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy.

(5) In default of the appointment of a trustee under subsection (4), the policy immediately on its being effected shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid.

(6) The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured, shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

12. (1) Subject to this section, in any question between husband and wife as to the title to or possession of property, either party may apply by summons to a Judge, and the Judge may make such order with respect to the property in dispute as he thinks fit, or may direct such application to stand over from time to time, and any enquiry touching the matters in question to be made in such manner as he shall think fit.

Questions between husband and wife as to property may be decided in summary way

(2) For the avoidance of doubt it is hereby declared that any power conferred by subsection (1) to make orders with respect to any property includes power to order a sale of the property.

(3) Any right of a party to a marriage under subsection (1) to apply to a Judge shall include the right to make such an application where it is claimed by one party (in this section called "the claimant party") that the other party (in this section called "the respondent party") has had in his possession or under his control—

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

and that either that money or other property has ceased to be in the respondent party's possession or under his control or that the claimant party does not know whether it is still in the possession or under the control of the respondent party.

(4) Where, on an application made to a Judge by virtue of subsection (3), the Judge is satisfied—

- (a) that the respondent party has had in his possession or under his control money or other property as mentioned in paragraph (a) or paragraph (b) of subsection (3); and
- (b) that he has not made to the claimant party 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 subsection shall be extended in accordance with subsection (5).

(5) Where subsection (4) applies, the power to make orders under subsection (1) shall include power for the Judge to order the respondent party to pay to the claimant party—

- (a) in a case falling within paragraph (a) of subsection (3), such sum in respect of the money to which the application relates, or the claimant party's share thereof, as the case may be; or
- (b) in a case falling within paragraph (b) of subsection (3), such sum in respect of the value of the property to which the application relates, or the claimant party's interest therein, as the case may be,

as the Judge may consider appropriate.

(6) Where on an application by virtue of subsection (3) it appears to the Judge 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 if any application had been made by the claimant party thereunder in a question as to the title to or possession of that property,

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

(7) Any power of a Judge under subsection (1) to direct inquiries or give any other directions in relation to an application under that subsection shall be exercisable in relation to an application made under subsection (3).

(8) In subsection (4) "disposition" does not include any provision contained in a will, but, with that exception, includes any conveyance, assurance or gift of property whether made by an instrument or otherwise.

13. An application may be made to a Judge under section 12 by either of the parties to the marriage notwithstanding that their marriage has been dissolved or annulled, if the application is made within three years after the dissolution or annulment of the marriage.

Time limit
for bringing
application
under section 12

14. (1) This section shall apply in relation to the parties to a marriage, and to the property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

Criminal
proceedings
by married
persons in
respect of
their property

(2) Subject to subsection (5), a person shall have the same right to bring proceedings against that person's wife or husband for any offence (whether under any enactment or otherwise) as if they were not married, and a person bringing any such proceedings shall be competent to give evidence for the prosecution at every stage of the proceedings.

(3) Subject to subsection (4), where a person is charged in proceedings not brought by that person's wife or husband with having committed any offence with reference to that person's wife or husband or to property belonging to the wife or husband, the wife or husband shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with any other person.

(4) The wife or husband (unless compellable at common law) shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused, and her or his failure to give evidence shall not be made the subject of any comment by the prosecution.

(5) No proceedings shall be instituted against a person for any offence of larceny or committing unlawful or malicious damage to property which at the time of the offence belongs to that person's wife or husband, or for any attempt, incitement or conspiracy to commit such an offence, unless such proceedings are instituted by or with the consent of the Director of Public Prosecutions.

(6) Subsection (5) shall not—

(a) apply to proceedings against a person for an offence, if that person is charged with committing the offence jointly with the wife or

husband, or if by virtue of any judicial decree or order (wherever made) that person and the wife or husband are at the time of the offence under no obligation to cohabit; and

- (b) prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or on bail of a person charged with an offence, where the arrest (if without a warrant) is made, or the warrant or arrest issues on an information laid, by a person other than the wife or husband.

Actions in
tort between
husband
and wife

15. (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 12,

and without prejudice to paragraph (b) the court may, in such an action, either exercise any power which could be exercisable on an application under section 12, 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) In this section the expression "the parties to a marriage" includes the persons who were parties to a marriage which has been dissolved.

(5) This section does not apply to any cause of action which arose, or would but for the subsistence of a marriage have arisen, before the commencement of this Act.

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

16. 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.

17. (1) Nothing in this Act shall—

- (a) during coverture which began before the 1st of January, 1885, 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 the 1st of January, 1937;
- (c) enable any judgment or order against a married woman in respect of a contract entered into, or debt or obligation incurred, before the 1st of January, 1937, to be enforced in bankruptcy or to be enforced otherwise than against her property.

(2) For the avoidance of doubt it is hereby declared that 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, and of suing and being sued either in tort or in contract or otherwise, in like manner as if they were not married;
- (d) prevents the exercise of any joint power given to a husband and wife;
- (e) exempts any married woman from liability under the bankruptcy laws in respect of any contract entered into, or debt or obligation incurred, by her before the 1st of January, 1937, in relation to any trade or business carried on by her, and in respect of which she would have been so liable if this Act had not been passed.

Amendment
of enactments

18. The enactments specified in the first column of the Schedule are amended in the manner specified in the second column of the Schedule.

SCHEDULE

(Section 18)

<i>Enactment</i>	<i>Amendment</i>
A. Larceny Ordinance, Ch. 4. No. 11, section 37	Repeal
B. Bankruptcy Ordinance, Ch. 6. No. 6, section 55	Repeal
C. Evidence Ordinance, Ch. 7. No. 9, First Schedule	Repeal the words "The Married Women's Property Ordinance, . . . sections 15 and 19".
D. Trustee Ordinance, Ch. 8. No. 3, section 63(1)	Repeal the words from "and notwithstanding" to "anticipation".
E. Conveyancing and Law of Property Ordinance, Ch. 27. No. 12, section 75 section 76	Repeal Repeal
F. Married Women's Property Ordinance, Ch. 27. No. 13 (The whole Ordinance)	Repeal
G. Leases and Sales of Settled Estates Ordinance, Ch. 27. No. 15, section 32	Repeal the words "either in his own right or in the right of his wife", and the words "or in the right of his wife who is seised in fee,".

SCHEDULE—CONTINUED

Enactment

section 33

Amendment

Repeal the words from “the wife or husband” to the end of the sentence and substitute therefor the words “the person granting the same”.

H Matrimonial Proceedings and Property Act, 1971 No 2 of 1972 section 60

Substitute the words “section 12 of the Married Persons Act, 1976” for—

(a) the words “section 20 of the Married Women’s Property Ordinance” occurring in subsection (1); and

(b) the words “section 20 (including that section as extended by section 20A of that Ordinance) of the Married Women’s Property Ordinance” occurring in subsection (2)

For the marginal note substitute the following
“Power of the Court under Married Person Act, 1976 unaffected.”.

Passed in the Senate this 23rd day of November, 1976.

R. GRIFFITH

Clerk of the Senate

Passed in the House of Representatives this 3rd day of December, 1976.

J. E. CARTER

Clerk of the House

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