

MARRIED PERSONS ACT

CHAPTER 45:50

Act
52 of 1976

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on section 15(3)

For Rules of Court made under section 15(3) of the Act of this Chapter, *see* Order 86 of the Rules of the Supreme Court 1975 inserted at the end of this Chapter as an Appendix.

CHAPTER 45:50

MARRIED PERSONS ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 45:50

MARRIED PERSONS ACT

52 of 1976. **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.**

Commencement. [1ST JUNE 1977]
85/1977.

Short title. **1.** This Act may be cited as the Married Persons Act.

Interpretation. **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;
(b) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt or obligation;
(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 1st 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 1st January 1937; or

(c) on or after 1st January 1937 is acquired by or devolves upon a married woman,

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

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

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. Married woman as sole protector of settlement.

(2) This section applies to disentailing assurances and surrenders made after 31st 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 written law 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).

Money and property derived from housekeeping allowance.

9. Where 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 the 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.

Investments by spouse of money of other spouse without consent.

10. (1) Where any deposit or investment is 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 the deposit or investment and the dividends thereof to be transferred and paid to the other spouse.

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

Moneys payable under policies 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) Where it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they are 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 the application to stand over from time to time, and any enquiry touching the matters in question to be made in such manner as he thinks 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 includes 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 subsection (3)(a) or (b); 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) includes power for the Judge to order the respondent party to pay to the claimant party—

- (a) in a case falling within subsection (3)(a), 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 subsection (3)(b), 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 subsection 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 subsection 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 written law 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 the 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.

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.

Actions in tort
between
husband and
wife.

(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 ante-nuptial 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.

Savings.

17. (1) Nothing in this Act shall—

- (a) during coverture which began before 1st 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 1st 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 1st 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 1st 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.

APPENDIX

ORDER 86

**PROCEEDINGS RELATING TO MINORS,
MATRIMONIAL STATUS AND SPOUSES**

I. MINORS

Interpretation

1. In this Order—

“the Act” means the Infants Act, Ch. 46:02;

“the Family Law Act” means the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Ch. 46:08.

2. (1) Subject to paragraph (2) an application concerning the maintenance or advancement of minors or made under the Family Law Act or under Part III of the Act shall be made to a Judge in Chambers by an originating summons intituled—

Ch.46:08.

- (i) in the case of an application under the Family Law Act—

In the matter of the Minor

and

In the Matter of the Family Law
(Guardianship of Minors,
Domicile and Maintenance) Act,
Ch. 46:08;

- (ii) in the case of an application under the Act—

In the matter of the Minor

and

In the matter of the Infants Act,
Ch. 46:02.

- (2) (a) Where any proceedings (including proceedings for divorce or judicial separation) are pending in relation to the minor; or

- (b) when the minor is a ward of Court or the administration of the estate or the maintenance or advancement of the minor is under the direction of the Court,

the application shall be made by summons.

Power of Judge pending Appeal

3. Where an appeal is entered against a judgment given or order made under rule 2 the Judge by whom the judgment was given or the order was made may make such orders either *ex parte* or otherwise as he may think proper.

Application to make a Minor a Ward of Court

4. (1) An application to make a minor a ward of Court must be made by originating summons.

(2) Where there is no person other than the minor who is a suitable defendant, an application may be made *ex parte* for leave to issue either an *ex parte* originating summons or an originating summons with the minor as defendant thereto; and except where such leave is granted, the minor shall not be made a defendant to an originating summons under this rule in the first instance.

(3) The date of the minor's birth shall, unless otherwise directed, be stated in the summons and the plaintiff shall—

- (a) on issuing the summons or before or at the first hearing thereof lodge in the appropriate Registry a certified copy of the entry in the Register of Births, or, as the case may be, in the Adopted Children Register relating to the minor; or
- (b) at the first hearing of the summons apply for directions as to proof of birth of the minor in some other manner.

(4) Unless the Court otherwise directs, the summons shall state the whereabouts of the minor or, as the case may be, that the plaintiff is unaware of the whereabouts.

(5) Every defendant other than the minor shall, forthwith after being served with the summons —

- (a) lodge in the appropriate Registry a notice stating the address of the defendant and the whereabouts of the minor, or as the case may be, that the defendant is unaware of his whereabouts; and
- (b) unless the Court otherwise directs, serve a copy of the notice on the plaintiff.

(6) Where any party other than the minor changes his address or becomes aware of any change in the whereabouts of the minor after the issue or, as the case may be, service of the summons, he shall, unless the Court otherwise directs, forthwith lodge notice of the change in the appropriate Registry and serve a copy of the notice on every other party.

(7) The summons shall contain a notice to the defendant informing him of the requirements of paragraphs (5) and (6).

(8) In this rule any reference to the whereabouts of a minor is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found.

When Minor ceases to be a Ward of Court

Ch. 46:08.

5. (1) A minor who, by virtue of section 35(2) of the Family Law Act, becomes a ward of Court on the issue of a summons under rule 4 shall cease to be a ward of Court—

- (a) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period;
- (b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the Court hearing it orders that the minor be made a ward of Court.

(2) Nothing in paragraph (1) shall be taken as affecting the power of the Court under section 35(3) of the Family Law Act to order that any minor who is for the time being a ward of Court shall cease to be a ward of Court.

(3) If no application for an appointment for the hearing of a summons under rule 4 is made within the period 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the appropriate Registry immediately after the expiration of that period.

Application under the Family Law Act, Ch. 46:08

6. Where there is pending any proceeding by reason of which a minor becomes a ward of Court, any application relating to the guardianship of minors under the Family Law Act with respect to that minor may be made by summons in that proceeding, but except in that case any such application shall be made by originating summons. Ch. 46:08.

Defendants to Guardianship Summons

7. (1) Where the minor with respect to whom an application under the Family Law Act is made is not the plaintiff, he shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by ordinary summons, be served with the summons, but subject to paragraph (2) any other person appearing to be interested in, or affected by the application shall be made a defendant or be served with the summons, as the case may be, including, where the application is made under section 13 of the Family Law Act with respect to a minor who has been received into the care of a certified school within the meaning of Part III of the Children Act, that school. Ch. 46:08. Ch. 46:01.

(2) The Court may dispense with service of the summons (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

Guardianship Proceedings may be in Chambers

Ch. 46:08. **8.** Applications under the Family Law Act relating to the guardianship of minors may be disposed of in Chambers.

Application for Paternity Orders under section 10 of the Status of Children Act Ch. 46:07

Ch. 46:07. **9.** An application for a paternity order under section 10 of the Status of Children Act, shall be made by originating summons.

Removal of Proceedings from a Magistrate's Court

Ch. 46:08. **10.** (1) An application for an order under section 46(1) of the Family Law Act for the removal of an application from a Magistrate's Court into the High Court shall be made *ex parte* by an originating summons, but the Court may direct that the summons shall be served on any person.

(2) The application may be heard by the Registrar or by an Assistant Registrar, but, if an order is made for the removal to the High Court of an application to the Magistrate's Court, that application shall be heard by a single Judge of the Court.

(3) Where an order is made under the said section 46(1), the plaintiff shall send a copy of the order to the Clerk of the Peace of the Magistrate's Court from which the proceedings are ordered to be removed.

(4) On receipt of certified copies of all entries in the books of the Magistrate's Court relating to the proceedings together with all documents filed in the proceedings the Registrar shall forthwith file the said documents and give notice to all parties that the application is proceeding in the High Court.

(5) The application so removed shall proceed in the High Court as if it had been made by originating summons.

Application of Matrimonial Causes Rules

Ch. 45:51. **11.** (1) Rules 68 to 71 (inclusive) of the Matrimonial Causes Rules (which relate to proceedings under section 50 of the Matrimonial Proceedings and Property Act) shall apply, with

the necessary modifications, to proceedings under section 13 of the Family Law Act.

Ch. 46:08.

(2) Rules 41, 44 and 45 of the Matrimonial Causes Rules (which relate to the drawing up and service of orders) shall apply to proceedings under this Part of this Order as if they were proceedings under those rules.

II. MATRIMONIAL STATUS

Application for Declaration affecting Matrimonial Status

12. (1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to the matrimonial status of any person, the proceedings shall be begun by petition.

(2) The petition shall state—

- (a) the names of the parties and the residential address of each of them at the date of presentation of the petition;
- (b) the place and date of any ceremony of marriage to which the application relates;
- (c) whether there have been any previous proceedings between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them and, if so, the nature of those proceedings;
- (d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the Court has jurisdiction to make it,

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed—

- (a) as conferring any jurisdiction to make a declaration in circumstances in which the Court could not otherwise make it; or

(b) as affecting the power of the Court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

Further Proceedings on Petition under Rule 12

13. Subject to rule 12, the Matrimonial Causes Rules shall apply with the necessary modifications to the petition as if it were a petition in a matrimonial cause.

III. SPOUSES

Provisions as to Actions in Tort

14. (1) This rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.

Ch. 45:50. (2) On the first application by summons or motion in an action to which this rule applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 15(2) of the Married Persons Act, should or should not be exercised.

(3) Notwithstanding anything in Order 13 or Order 19 judgment in default of appearance or of defence shall not be entered in an action to which this rule applies except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(5) If the summons is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.