

Jersey Law 3/1973

LEGITIMACY (JERSEY) LAW, 1973.

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A LAW to enunciate and revise the Law regarding the legitimacy of children, to make provision for the determination of questions of the legitimacy or illegitimacy of children, and the validity of marriages, to confer rights on illegitimate children and their mothers to succeed to each other's estate, and to make provision for related matters, sanctioned by Order of Her Majesty in Council of the

16th day of FEBRUARY, 1973.

(Registered on the 13th day of April, 1973).

STATES OF JERSEY.

The 14th day of November, 1972.

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law: -

ARTICLE 1

INTERPRETATION

- (1) In this Law, unless the context otherwise requires –
- “the Court” means the Inferior Number of the Royal Court;
- “legitimated child” means a child legitimated *per subsequens matrimonium*;

“Superintendent-Registrar” means the Superintendent-Registrar of births, marriages and deaths appointed in pursuance of the “Loi (1842) sur l’Etat Civil”.¹

(2) References in this Law to children are references to children as issue of their parents and references to children and persons are not to be interpreted by reference to age.

(3) References in this Law to any enactment are references to that enactment as amended by any subsequent enactment.

ARTICLE 2

CHILDREN WHO ARE LEGITIMATE BY BIRTH

(1) A child who is legitimate by birth is a child born or conceived during the subsistence of a lawful marriage of whom the father is the husband of the mother.

(2) The fact that a child is born or conceived during the subsistence of a lawful marriage raises a presumption that the husband is the father of the child which may be rebutted only by strong and satisfactory evidence to the effect –

- (a) that the husband was physically incapable, by reason of absence, accident or otherwise, of cohabiting with the mother at the time of the conception of the child; or
- (b) that the husband was sexually impotent at the time of the conception of the child; or
- (c) that the husband was living apart from the mother at the time of the conception of the child and that the husband did not have opportunities for marital intercourse at that time; or

¹ Tomes I–III, page 86.

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- (d) that the mother has been guilty of adultery and that the father did not have marital intercourse with the mother at the time of the conception of the child; or
- (e) in the case of a child born within the first one hundred and eighty days of the marriage of the husband and the mother, that the husband did not have opportunities for pre-marital intercourse with the mother at the time of the conception of the child:

Provided that no evidence in support of the grounds specified in this sub-paragraph shall be admissible where it is proved that the husband was aware, at the time of the marriage, that the mother was pregnant or that he was a party to the registration of the birth of the child.

ARTICLE 3

CHILDREN WHO ARE ILLEGITIMATE

An illegitimate child is a child who is not legitimate by birth as defined in paragraph (1) of Article 2 of this Law or who has not become a legitimate child in the circumstances described in paragraph (1) of Article 4 of this Law.

ARTICLE 4

LEGITIMATION “PER SUBSEQUENS MATRIMONIUM”

(1) An illegitimate child becomes a legitimate child if, during the lifetime of the child, the father and the mother are lawfully married and the father, either before, at the time of or after the marriage, acknowledges himself to be the father of the child.

(2) A child who becomes a legitimate child in the circumstances described in paragraph (1) of this Article is a child legitimated “*per subsequens matrimonium*”.

ARTICLE 5

DETERMINATION OF QUESTIONS OF LEGITIMACY

The question whether a child is legitimate or illegitimate may be raised as an issue in any proceedings in which it may be relevant, or proceedings may be taken for the express purpose of determining it in accordance with Article 6 or 7 of this Law.

ARTICLE 6

DECLARATION OF LEGITIMACY ETC

(1) Any person who is domiciled in the Island or claims any immoveable or moveable estate situate in the Island may apply by petition to the Court for a decree declaring that he is the legitimate child of his parents, or that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage, or that his own marriage was a valid marriage.

(2) Any person claiming that he or his parent or any remoter ancestor became or has become a legitimated child may apply by petition to the Court for a decree declaring that he or his parent or remoter ancestor, as the case may be, became or has become a legitimated child.

(3) Notwithstanding the limitation imposed by Article 7 of this Law on the classes of person who may apply for a decree under that Article, a person who applies to the Court under paragraph (2) of this Article for a decree declaring that he became or has become a legitimated child may apply by the same petition for a decree under the said Article 7 declaring that he was born illegitimate.

(4) Applications to the Court under the foregoing provisions of this Article may be included in the same petition, and on any such application the Court shall make such decree as it thinks just, and the decree shall be binding on all persons whatsoever, so however that the decree shall not prejudice any person –

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- (a) if it is subsequently proved to have been obtained by fraud or collusion; or
- (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.

(6) A copy of every application under this Article and of any affidavit accompanying it shall be delivered to the Attorney General at least one month before the application is made, and the Attorney General shall be made a respondent on the hearing of the application and on any subsequent proceedings relating thereto.

(7) Where any application is made under this Article, such persons as the Court thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(8) No proceedings under this Article shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

ARTICLE 7

DECLARATIONS OF ILLEGITIMACY

(1) A person who, in accordance with the provisions of Article 2 of this Law, is presumed to be the father of a child born in the Island or born abroad of a woman who was domiciled in the Island at the time of the birth, or any person whose right to any immoveable or moveable estate situate in the Island is affected by the legitimacy of a child, whether born in the Island or elsewhere, may apply by petition to the Court for a decree declaring that the child is illegitimate.

(2) On any application under this Article the Court shall make such decree as it thinks just:

Provided that the Court may dismiss the petition if in its opinion the petitioner has been guilty of unreasonable delay in presenting or prosecuting the petition.

(3) A decree under this Article shall be binding on all persons whatsoever, so however that the decree shall not prejudice any person –

- (a) if it is subsequently proved to have been obtained by fraud or collusion; or
- (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.

(4) A copy of every application under this Article and of any affidavit accompanying it shall be delivered to the Attorney General at least one month before the application is made, and the Attorney General shall be made a respondent on the hearing of the application and on any subsequent proceedings relating thereto.

(5) Where any application is made under this Article, such persons as the Court thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(6) Where in any proceedings under this Article the petitioner dies or abandons the proceedings, the Court, on the application of any other person entitled to institute those proceedings, may make such order as it thinks fit so that the proceedings may be continued in the name of that other person as petitioner.

(7) No proceedings under this Article shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

ARTICLE 8

EVIDENCE

(1) In any proceedings in which it is sought to prove that a child is illegitimate or legitimate, no witness, whether a party to the proceedings or not, shall be liable to be asked or be bound to answer any question tending to show that he has been guilty of adultery unless he has already given evidence in the same proceedings in disproof of the alleged adultery.

(2) In any proceedings under this Law in which any evidence of an indecent character is about to be tendered, the Court may, if it thinks it necessary in the administration of justice or of public decency, direct that all or any persons, not being members or officers of the Court or parties to the proceedings or other persons directly concerned in the proceedings, shall be excluded from the Court during the taking of that evidence.

ARTICLE 9

REGULATION OF REPORTS

(1) It shall not be lawful to print or publish or cause or procure to be printed or published, in relation to any proceedings in which it is sought to prove that a child is illegitimate, any particulars other than the following –

- (a) a concise statement of the charges, defences and countercharges in support of which evidence has been given;
- (b) submissions on any point of law arising in the course of the proceedings and the decision of the Court thereon;
- (c) the judgment of the Court and observations made by members of the Court in giving judgment:

Provided that nothing in this paragraph shall be held to permit the publication of any details or other matter likely to injure public morals.

(2) If any person acts in contravention of the provisions of this Article, he shall be liable in respect of each offence to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment:

Provided that no person, other than a proprietor, editor, master printer or publisher of the newspaper or other vehicle of publication of the matter in respect of which a prosecution is instituted shall be liable to be convicted under this Article.

(3) No prosecution for an offence under this Article shall be instituted without the consent of the Attorney General.

(4) Nothing in this Article shall apply to the printing of any pleading, transcript of evidence or other document for use in connexion with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Court or of the Court of Appeal or of Her Majesty or of the Lords of Her Privy Council, or to the printing or publication of any matter in any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any publication of a technical character *bona fide* intended for circulation among members of the legal or medical professions.

ARTICLE 10

RE-REGISTRATION OF BIRTHS

(1) Where a decree has been pronounced under Article 6 or 7 of this Law in relation to a child whose birth has been registered under the “Loi (1842) sur l’Etat Civil”² and as a result the registration is erroneous, the Judicial Greffier shall, at the expiration of the period (if any) in which proceedings may be taken for the rescission of the decree,

² Tomes I–III, page 85.

transmit a certified copy of the decree to the Superintendent-Registrar, and the Superintendent-Registrar shall re-register the birth of the child in such manner as may be prescribed by regulations.

(2) No fee shall be charged for the re-registration of a birth in pursuance of this Article.

(3) Regulations for the purposes of this Article may be made by the States and may contain provisions relating to the supply of certified copies of the original entry of the birth of any child whose birth has been re-registered in pursuance of this Article or of Article 16 of the Declarations of Illegitimacy (Jersey) Law, 1947,³ and prohibiting the supply of any such certified copy except under such authority as may be prescribed by the regulations.

ARTICLE 11

RIGHT OF ILLEGITIMATE CHILD AND MOTHER OF ILLEGITIMATE CHILD TO SUCCEED ON DEATH

(1) Where, after the commencement of this Law, the mother of an illegitimate child dies intestate as respects all or any of her immoveable or moveable estate the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been legitimate.

(2) Where, after the commencement of this Law, the mother of an illegitimate child dies testate as respects all or any of her moveable estate, the illegitimate child or, if he is dead, his issue, shall be entitled to the same share therein to which he or such issue would have been entitled if he had been legitimate.

(3) Where, after the commencement of this Law, an illegitimate child dies intestate as respects all or any of his immoveable or moveable estate, his mother, if surviving, shall be entitled to take any interest therein to which she would have been entitled if the child had been legitimate and she had been the only surviving parent.

³ Tome 1946–1948, page 364.

ARTICLE 12

LIMITATION ON APPLICATION

Nothing in this Law shall operate to render illegitimate a child born before the first day of January, nineteen hundred and forty-one, who, in accordance with the law in force at the time of his birth, is a legitimate child.

ARTICLE 13

CONSEQUENTIAL EFFECT ON THE “LOI (1842) SUR L’ETAT CIVIL”

(1) References in the “Loi (1842) sur l’Etat Civil”⁴ to an illegitimate child (“enfant illégitime”) are to be construed as references to a child who is not legitimate by birth as defined in paragraph (1) of Article 2 of this Law.

(2) In so far as an entry, or a certified copy of an entry, in a register of births kept in pursuance of the “Loi (1842) sur l’Etat Civil”⁵ is, by virtue of that Law, evidence of the facts contained in the entry, such evidence is *prima facie* evidence and not conclusive evidence of those facts.

ARTICLE 14

REPEAL AND SAVINGS

(1) Subject to the provisions of paragraph (2) of this Article, the Declarations of Illegitimacy (Jersey) Law, 1947,⁶ is hereby repealed.

(2) Any proceedings begun under the Law hereby repealed before the commencement of this Law may be continued and determined as if this Law had not been passed.

⁴ Tomes I–III, page 85.

⁵ Tomes I–III, page 85.

⁶ Tome 1946–1948, page 355.

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(3) The provisions of this Law are without prejudice to the provisions of paragraph (2) of Article 18 of the Matrimonial Causes (Jersey) Law, 1949,⁷ of the Legitimacy (Jersey) Law, 1963,⁸ and of any other enactment which provides that a child who but for those provisions would be an illegitimate child shall be deemed to be a legitimate child.

ARTICLE 15

SHORT TITLE AND COMMENCEMENT

(1) This Law may be cited as the Legitimacy (Jersey) Law, 1973.

(2) This Law shall come into force forthwith upon promulgation for the purposes only of making Regulations under Article 10 of this Law and, for every other purpose, shall come into force on the day on which the first such Regulations come into force.

R.S. GRAY,

Deputy Greffier of the States.

⁷ Tome 1949–1950, page 307 and Tome 1968–1969, page 426.

⁸ Tome 1963–1965, page 29.