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THE MATRIMONIAL CAUSES LAW (9 OF 1976)

(1997 Revision)

Consolidated with Law 9 of 1995 (part) and as read with Law 28 of 1985.

Revised under the authority of the Law Revision Law (19 of 1975).

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Law 9 of 1976-25th June, 1976

Law 9 of 1995-13th September, 1995

Law 28 of 1985-2nd December, 1985

Consolidated and revised this 9th day of September, 1997.

MATRIMONIAL CAUSES LAW

(1997 Revision)

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MATRIMONIAL CAUSES LAW

(1997 Revision)

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| 1. This Law may be cited as the Matrimonial Causes Law (1997 Revision). | Short title |
| 2. (1) In this Law- | Definitions and application |
- “child of a marriage” includes any child under the age of sixteen years who is the child, adopted or otherwise, of either party to such marriage or who has been brought up in the matrimonial home of the parties to such marriage as a member of their family;
- “competent”, with reference to any court, means competent in the place of its location to make any particular decree;
- “Court” means the Grand Court;
- “domicile” has the meaning ascribed to it, from time to time, in English law;
- “foreign court” means a court of law having jurisdiction outside the Islands;
- “legally effective proceedings” in relation to any divorce or legal separation obtained outside the Islands, means judicial or other proceedings in any country outside the Islands which render such divorce or legal separation effective under the law of that country and applies to polygamous as well as to monogamous marriages;
- “marriage” means a marriage which at any given time is according to the law of the place of its celebration-
- (a) monogamous; and
 - (b) indissoluble save by the death of one of the parties thereto, or by the decree of a competent court or other legally effective proceeding;
- “ordinary residence” has the meaning ascribed to it from time to time in English law;
- “petition” includes cross-petition and “petitioner” includes cross-petitioner;
- “respondent” includes cross-respondent;
- “rules” means such rules and orders of court in relation to matrimonial causes and matters generally as may be made or applied under this Law; and

“spouse” means the male or female party to a marriage.

*See Note 1 on page 17

*(2) The provisions of this Law, relating to legal separations and divorces obtained outside the Islands, applies to such legal separations and divorces obtained before 2nd December, 1985 as well as after and, in the case of a legal separation or divorce obtained before 2nd December, 1985-

- (a) operate in relation to any time before 2nd December, 1985 as well as in relation to any subsequent time; but
- (b) do not affect any property rights to which any person became entitled or question of the validity of any legal separation or divorce granted in the Islands before 2nd December, 1985.

Powers of the Court

3. The Court has jurisdiction in all matters pertaining to this Law and, subject to the provisions thereof, has power to pronounce and enforce decrees of-

- (a) nullity of marriage;
- (b) presumption of the death of a spouse;
- (c) dissolution of marriage;
- (d) judicial separation;
- (e) reversal of decrees of judicial separation; and
- (f) matters ancillary thereto,

and has, in addition, all the powers of the Court of Chancery in England necessary to enable it to exercise the jurisdiction conferred upon it by this Law.

Rules of Court

4. The Court may make rules and orders for regulating the practice and procedure, Court fees, taxation of costs and other matters arising out of matrimonial suits brought under this Law and, pending the making of any rule or order in any particular matters, the practice and procedure of the Supreme Court of Jamaica, shall, subject to any necessary modifications and adaptations, be applicable to matters arising out of this Law.

Jurisdiction over persons

5. The Court has jurisdiction to entertain a suit arising out of this Law where, at the time of filing suit, or at a material time with reference to the suit and within one year of the presentation of the petition, either of the parties to the suit was domiciled in the Islands; or the party filing suit, being a female, has been ordinarily resident in the Islands for at least two years immediately preceding the presentation of the petition.

Foreign marriages

6. The Court will recognise a marriage celebrated outside the Islands upon being satisfied that the marriage was in fact celebrated in accordance with the law of the place of such celebration:

Provided that it is not proved to the Court, in accordance with section 8, that such marriage is void.

7. (1) The Court will recognise the decree or order of a foreign court or other legally effective proceeding with reference to the marital status of the parties to a marriage where, irrespective of whether the grounds for the making of such decree or order would, in the Islands, be grounds for making a similar decree or order, the Court is satisfied that with respect to the country within which the foreign court has jurisdiction either spouse was at the date of the petition giving rise to the proceedings (whether in the first instance for legal separation or divorce) and culminating in such decree or order-

Foreign decrees

- (a) habitually resident in that country;
- (b) a national of that country; or
- (c) domiciled in that country under the law relating to domicile there appertaining,

and the Court is satisfied that the foreign court, tribunal or authority was competent in that country to make the decree or order or other legally effective pronouncement:

Provided that the validity of such decree or order of a foreign court granting a divorce or judicial separation shall not be recognised in the Islands if it was granted at a time when, according to the law of the Islands, there was no subsisting marriage between the parties:

Provided further that recognition by virtue of this section may be refused if such decree or order was obtained by one spouse-

- (a) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or
- (b) without the other spouse having been given such opportunity to take part in the proceedings as, having regard to the matters aforesaid, should reasonably have been given,

or recognition would manifestly be contrary to public policy.

(2) Where the validity of a decree of divorce pronounced by a foreign court is entitled to recognition by virtue of subsection (1) neither spouse shall be precluded from re-marriage in the Islands on the grounds that the validity of the divorce would not be recognised in some other country.

(3) Nothing in this section shall be construed as requiring the recognition of any finding of fact made in the proceedings of the foreign court other than findings of fact upon which the jurisdiction was assumed, which latter findings shall be binding upon the Court.

Grounds for pronouncing
decrees for nullity of
marriage

8. (1) For the purpose of this section a marriage is void if-

- (a) it was celebrated in the Islands and-
 - (i) it is within the prohibited degrees of consanguinity or affinity; or
 - (ii) it is void under the law in force for the time being in the Islands relating to marriage;
- (b) it is bigamous; or
- (c) the parties were not virtually consenting thereto by reason of duress, fraud or incapacity of mind.

(2) For the purpose of this section a mentally defective person means person who-

- (a) before reaching the age of eighteen years suffered from a condition of incomplete or arrested development of mind whether arising from inherent causes or induced by disease or injury;
- (b) is an idiot, that is to say, a person in whose case there exists mental defectiveness of such a degree that he is unable to guard himself against common physical dangers;
- (c) is an imbecile, that is to say, a person in whose case there exists mental defectiveness which, though not amounting to idiocy, is yet so pronounced that he is incapable of managing himself or his affairs;
- (d) is a feeble minded person, that is to say, a person in whose case there exists mental defectiveness which, though not amounting to imbecility, is yet so pronounced that he requires care, supervision and control for his own protection or the protection of others; or
- (e) is a moral defective, that is to say, a person in whose case there exists mental defectiveness coupled with vicious or criminal propensities and who requires care, supervision and control for the protection of others.

(3) A decree of nullity may be pronounced by the Court in respect of any marriage or purported marriage on the ground that-

- (a) such marriage is void;
- (b) one of the parties thereto was, at the time of the marriage, physically incapable of consummating the marriage and remains so incapable;

- (c) the marriage has not been consummated by reason of the wilful refusal of the respondent to consummate the marriage;
- (d) that either party to the marriage was, at the time of the marriage, of unsound mind, mentally defective or subject to recurrent fits of insanity or epilepsy;
- (e) the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
- (f) the respondent was at the time of marriage pregnant by some person other than the petitioner:

Provided that, in the cases specified in paragraphs (b) to (f) the petitioner was, at the time of the celebration of the marriage, ignorant of the facts alleged and the proceedings were instituted within one year from the date of the marriage; and in the cases specified in paragraphs (d) to (f), marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds of the decree.

(4) Where, apart from this Law, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside the Islands, nothing in the section shall-

- (a) preclude the determination of that matter as aforesaid; or
- (b) require the application to the marriage of the grounds there mentioned except so far as applicable in accordance with those rules.

9. Where the Court is satisfied that for a period of at least seven years immediately preceding the presentation of an *ex parte* petition by a party to a marriage that the other party to the marriage has been continuously absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, the Court may grant a decree of the presumption of the death of such other party.

Presumption of death

10. (1) A decree of dissolution of marriage may be pronounced by the Court in respect of a marriage on the ground that since the celebration of the marriage-

Grounds for pronouncing decrees for dissolution of marriage

- (a) the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

- (d) the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the decree being pronounced; or
- (e) the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition,

if the Court, after inquiring so far as it can into the facts of the case, is satisfied that-

- (i) the grounds for the petition have been established;
- (ii) the marriage has broken down irretrievably; and
- (iii) no material impediment under this Law exists to the pronouncement of the decree.

(2) For the purpose of subsection (1)-

- (a) spouses shall be treated as living apart unless they are living with each other in the same household;
- (b) the period of desertion shall be deemed to run-
 - (i) whether or not there has, during such period, been an attempt at reconciliation as hereinafter provided;
 - (ii) whether or not the parties are judicially separated; and
 - (iii) whether or not the deserting party is incapable of continuing the necessary intention, if the Court is of the opinion that, had such a party been so capable, the desertion would have continued at the time.

(3) In considering whether a period of desertion or absence has been continuous for the purposes of paragraphs (c), (d) or (e) of subsection (1), no account shall be taken of any one period (not exceeding three months) during which the parties may have resumed cohabitation with a view to reconciliation.

(4) No petition under paragraph (a) of subsection (1) shall be presented to the Court unless, at the date of the presentation of the petition, two years have passed since the celebration of the marriage:

Provided that, if upon application made, the Court is satisfied that exceptional hardship is suffered by the petitioner it may grant leave for the petition to be presented within such period.

Grounds for pronouncing
judicial separation

11. (1) A decree of judicial separation may be pronounced by the Court in respect of any marriage at any time after its celebration upon any ground upon which a decree of dissolution could be granted under paragraphs (a) to (e) of

section 10(1) if the Court, after inquiring so far as it can into the facts of the case, is satisfied that such grounds have been established, having regard, where appropriate, to paragraph (a) and subparagraphs(i) and (iii) of paragraph (b) of section 10(2) and without regard to any time limit imposed under paragraph (c), (d) or (e) of subsection (1) of that section.

(2) The Court may, on the application of either party and with the consent of the other party in respect of a marriage in which a decree of judicial separation has been pronounced, reverse such decree.

12. (1) The effect of a decree of nullity in respect of a void marriage is declaratory that no marriage ever existed and the ceremony thereof was void *ab initio*. Effect of certain decrees

(2) The effect of a decree of nullity in respect of a marriage other than a void marriage is to annul the marriage with effect from the date of the decree and that every child who would have been the legitimate child of the parties if the marriage had been dissolved instead of being annulled shall be deemed to be their legitimate child notwithstanding the annulment.

(3) The effect of a decree of presumption of death or of dissolution of marriage is to dissolve the marriage with effect from the date of the decree.

(4) The effect of a decree of judicial separation is, while such separation subsists, that-

- (a) neither party may interfere with or molest the other; and
- (b) that the parties shall be deemed to be in mutual desertion of and absence from one another for the purpose of any future petition for dissolution of the said marriage.

(5) The Court shall postpone pronouncement of a decree under subsections (2) to (4) until it is satisfied that provision has been made for the custody and care of all the children of the marriage and that no application for any order for-

- (a) settlement of marital property;
- (b) financial provision;
- (c) periodic payments;
- (d) damages; or
- (e) costs,

remains outstanding.

(6) Nothing in subsection (5) shall prejudice the right of either party at any time after the pronouncement of a decree to apply for a variation of any order made by the Court as hereinafter provided.

Restrictions on decree
*See Note 2 on page 17

*13. (1) In any proceedings for a decree of divorce or nullity of marriage, or a decree of judicial separation, the court shall consider -

- (a) whether there are any children of the marriage to whom this section applies; and
- (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Law, 1995 with respect to any of them.

Law 9 of 1995

(2) Where, in any case to which this section applies, it appears to the court that -

- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the Children Law, 1995 with respect to any child of the marriage;
- (b) it is not in a position to exercise those powers without giving further consideration to the case: and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

it may direct that the decree of divorce or nullity is not to be made absolute, or that the decree of judicial separation is not to be granted, until the court orders otherwise.

(3) This section applies to -

- (a) any child of the marriage who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and
- (b) any child of the marriage who has reached that age at that date and in relation to whom the court directs that this section should apply.

Collusion

14. It is lawful for the parties to a marriage, for the purpose of facilitating proceedings under this Law, to enter into an agreement for-

- (a) providing that evidence of past matters and transactions be available to the Court;
- (b) the custody and care and control of the children of the marriage;
- (c) the settlement of matrimonial property;

- (d) pecuniary provision; or
- (e) periodical payments:

Provided that-

- (i) a full and frank disclosure of such agreement and the negotiations leading thereto is made to the Court;
- (ii) neither party has himself committed or has procured or connived at the commission by the other party of a matrimonial offence in order to obtain or accelerate a decree; and
- (iii) neither party has exerted improper persuasion upon or offered improper advantage to an otherwise unwilling party for the purpose of obtaining such party's consent to a decree being obtained or accelerated.

15. The Court may refuse the grant of a decree where-

Impediments to the grant of a decree

- (a) there has been unjustifiable delay in the presentation of the petition; or
- (b) where the party seeking the decree has wilfully attempted to deceive the Court in a matter or particular material to the case.

16. In considering any petition for dissolution of a marriage, the Court may treat any subsisting decree of judicial separation in respect of that marriage as sufficient proof of the grounds upon which such decree was granted, but the Court shall not pronounce a decree of dissolution of such marriage without receiving evidence from the petitioner.

Proceedings for dissolution after judicial separation

17. Where either party to a suit for dissolution of marriage alleges that the other party has, since the celebration of the marriage, committed adultery, the person with whom adultery is alleged to have been committed shall be joined in the suit by the party making such allegation and shall be cited as a co-respondent:

Co-respondent to be cited

Provided that the Court may, for special reasons, dispense with the joinder of such person.

18. Where a petition contains a prayer for general damages or costs against a co-respondent and the Court-

When damages and costs may be awarded against co-respondent

- (a) pronounces a decree of dissolution of the marriage;
- (b) finds that such co-respondent has committed adultery with the respondent; and
- (c) finds that the conduct of such co-respondent has contributed materially to the breakdown of the marriage,

the Court may, as the case may be, order the co-respondent to pay the whole or such proportion of the costs of the suit and such damages as appears just and shall,

at its discretion, allocate the damages to the petitioner or to any settlement for the benefit of the children of the marriage.

General principles to be followed by the Court in ancillary matters

19. In dealing with all ancillary matters arising under this Law, the Court shall have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.

Orders pending suit

20. The Court may make orders pending the outcome of any suit in respect of which a petition has been presented providing for-

- (a) the care and control of the children of a marriage;
- (b) the use of a matrimonial home;
- (c) periodic payments to be made by one party to another pending suit;
- (d) an injunction for the protection of settled and other property in which either spouse claims an interest;
- (e) the protection of one spouse from interference by the other; and
- (f) security for costs.

Declaration of legitimacy

21. Where, in the trial of any suit brought under this Law, evidence is given which tends to throw doubt on the legitimacy of any child of the marriage relevant to the suit, the Court may, at the time of pronouncing the decree, make a declaration declaring such child to be a legitimate child of such marriage.

Ancillary orders

22. At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders for-

- (a) the custody, care and control of the children of the marriage;
- (b) the disposition of matrimonial property, including the matrimonial home;
- (c) varying any settlement of the property of the spouses made in consideration of the marriage, whether such settlement was made before or upon the treaty of the said marriage.
- (d) varying any other settlement of matrimonial property;
- (e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse;
- (f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage and for the other spouse; and
- (e) costs.

Duration of periodic payments

23. (1) Where an order is made under section 22 for periodic payments such order, unless varied by the Court, shall remain in force in respect of payments to a spouse, until the remarriage or death of such spouse and in respect of payments

for the benefit of a child of the marriage until the death of such child or until such child attains the age of sixteen years:

Provided that in the case of payments for the benefit of a child of the marriage, the Court may extend the period of such payments so long as the child is receiving education and is under the age of twenty-one years:

Provided further that, where a child of the marriage is, at the time of pronouncing a decree, under a disability of such a nature as to preclude it from maintaining itself independently, the Court may order that the payments shall be continued throughout the period of disability, notwithstanding the age of the child.

(2) Liability for periodic payments shall remain a charge on the estate of a deceased spouse.

24. Either spouse or the personal representatives of either spouse may make application for variation of any order made under section 22, and the Court, after hearing the parties, may make such variation.

Variations of ancillary orders

25. Either party to a suit brought under this Law may appeal to the Court of Appeal against any decree or order pronounced or made by the Court in such suit in respect of any matter of law or of mixed fact and law, provided that written notice of appeal is lodged within twenty-one days of the pronouncement of the decree or such notice is given orally in open court at the time of the pronouncement of the decree.

Notice of appeal

26. The Court of Appeal may, after hearing and considering any appeal against any decree pronounced under this Law-

Powers of Court of Appeal

- (a) rescind the decree; or
- (b) confirm the decree with or without variation of any order made therein.

27. Any spouse whose marriage has been dissolved or annulled under this Law may remarry-

Right of parties to remarry

- (a) when the time for appeal against the decree has expired without notice of appeal having been given; or
- (b) if notice of appeal has been given then-
 - (i) upon the withdrawal of such notice; or
 - (ii) after the pronouncement of the judgment of the Court of Appeal confirming the decree,

whichever is appropriate.

Procedure

28. (1) All parties to be affected by a petition shall, unless the Court orders otherwise, be served with notice thereof in such manner as the Court or the rules may provide.

(2) All suits under this Law shall be tried by a Judge sitting without a jury.

(3) The Court may, if it thinks fit, require the attendance of the petitioner at any hearing, who shall be subject to examination and cross-examination.

(4) The Court may, from time to time, adjourn the hearing of a petition and may require further evidence thereof if it thinks fit, and may require ancillary matters to be dealt with in chambers.

(5) Witnesses in proceedings before the Court, where they can be had, shall be examined *viva voce* in open court:

Provided that the parties, except as hereinbefore provided, shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in each case shall, on the application of the opposite party or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party *viva voce* in open court, and, after such cross-examination, may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

(6) Where the Court dispenses with the attendance of a witness for illness or other sufficient cause, it may order him or her to be examined by interrogatories, otherwise by a commissioner or examiner to be appointed by the Court.

Publication in revised form authorised by the Governor in Council this 9th day of September, 1997.

Carmena H. Parsons
Clerk of Executive Council

Notes (not forming part of the Law):

1. By a Government Notice dated 2nd December, 1985 and published in the *Extraordinary Gazette of 2nd December 1985*, the said 2nd December, 1985 was appointed under section 2 of the Law as the date on which the Law came into operation. However, under section 2 of the *Matrimonial Causes (Validation) Law, 1985* (28 of 1985), it was provided that anything which had been done

between the 14th February, 1977 and the 2nd December, 1985 in purported exercise of any power conferred by the Matrimonial Causes Law which would have been lawfully done if that Law had come into operation on 14th February, 1977, shall, for all purposes whatsoever, be deemed to have been lawfully done and shall have effect and be deemed to have had effect accordingly.

2. The provisions of section 13 were inserted into this Law by Part 1 of Schedule 6 to the Children's Law, 1995 (9 of 1995) which had not, as at the 12th January, 1998, been brought into operation.