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CHAPTER L30

LAW REFORM (ILLEGITIMACY) ACT

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LAW REFORM (ILLEGITIMACY) ACT

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LAW REFORM (ILLEGITIMACY) ACT

Interpretation

1. In this Act—

"disposition" means a disposition, including an oral disposition, of real or personal property whether made *inter vivos* or by will or codicil;

"illegitimate", in relation to any person, means a person born, whether within or without Anguilla, of parents who were not married to each other at the date of such birth, and, except for the purposes of section 2, includes a person who has been legitimated under the provisions of the Legitimacy Act, but does not include any person who though born illegitimate, has been adopted under the provisions of the Adoption of Children Act; and grammatical variations and cognate expressions shall be construed accordingly.

Succession on intestacy in case involving illegitimate child

2. (1) Where either parent of an illegitimate child dies intestate as respects all or any of his or her real or personal property, 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 born legitimate.

(2) Where an illegitimate child dies intestate in respect of all or any of his real or personal property, each of his parents, if surviving, shall be entitled to take any interest therein to which that parent would have been entitled if the child had been born legitimate.

(3) For the purpose of subsection (2), the provisions of the Intestates Estates Act as amended by section 10 of this Act, an illegitimate child shall be presumed not to have been survived by his father unless the contrary is shown.

(4) This section does not affect any right under the intestacy of a person dying before 1st January, 1983.

Presumption that reference to children and other relatives includes illegitimates, etc.

3. (1) In any disposition made after 1st January, 1983—

(a) any reference (whether express or implied) to the child or children of any person shall, unless the contrary intention appears, be construed as, or as including, a reference to any illegitimate child of that person; and

(b) any reference (whether express or implied) to a person or persons related in some other manner to any person shall, unless the contrary intention appears, be construed as, or as including, a reference to anyone who would be so related if he, or some other person through whom the relationship is deduced, had been born legitimate.

(2) There is hereby abolished, as respects any disposition made after 1st January, 1983, any rule of law that a disposition in favour of illegitimate children not in being at the date when the disposition takes effect is void as being contrary to public policy.

(3) For the purposes of this section, and notwithstanding any rule of law to the contrary, a disposition made by will or codicil executed before 1st January, 1983 shall not be treated as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

Meaning of "child" or "issue" in section 31 of Wills Act

4. In relation to a testator who dies having made a will dated after 1st January, 1983, section 31 of the Wills Act, which provides *inter alia* that gifts to children of a testator shall not lapse if they predecease him but leave issue, shall have effect as if—

(a) the reference to a child or other issue of the testator (that is, the intended beneficiary) included a reference to any illegitimate child of the testator and to anyone who would rank as such issue if he, or some other person through whom he is descended from the testator, had been born legitimate; and

(b) the reference to the issue of the intended beneficiary included a reference to any one who would rank as such issue if he, or some other person through whom he is descended from the intended beneficiary, had been born legitimate.

Protection of trustees and personal representatives

5. Notwithstanding the foregoing provisions of this Act, trustees or personal representatives may convey or distribute any real or personal property to or among the persons entitled thereto without having ascertained that there is no other person who is or may be entitled to any interest therein by virtue of—

(a) section 2, so far as it confers any interest on illegitimate children or their issue or on the father of an illegitimate child; or

(b) section 3 or 4;

and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this section shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

Amplification of particulars of registration of birth of illegitimate child

6. Notwithstanding the provisions of the Registration of Births, Deaths and Marriages Act, in any case in which under that Act the birth of an illegitimate child has been registered and the name of the father has not been included in the register, upon application in writing, verified by a declaration made before a justice of the peace or a notary public, made jointly by the mother and the person acknowledging himself to be the father, the Registrar of Births, Deaths and Marriages shall amend the registration of the birth of the child by adding the particulars in respect of the father, and shall note in the margin of the register the date when such particulars were added.

Use of blood tests in determining paternity

7. (1) Subject to the provisions of this section, in any civil proceedings in which the paternity of any person falls to be determined, the court having cognizance of the case may, on the application by any party to the proceedings, give a direction for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the father of that person and for the taking, within a period to be specified in the direction, of blood samples from that person, the mother of that person and any party alleged to be the father of that person or from any, or any 2, of those persons, but the court may at any time revoke or vary any direction given under this subsection.

(2) Without prejudice to the provisions of section 8, a blood sample which is required to be taken from any person for the purpose of giving effect to a direction given under subsection (1) shall not be taken from that person except—

(a) with his consent;

(b) if he is under the age of 16 years, the consent of his parent or guardian; or

(c) if, due to any disease or infirmity of mind he is incapable of understanding the nature or purpose of the proposed blood test, with the consent of the person having control of him and the certificate of a duly qualified medical practitioner that the taking of a blood sample will not be prejudicial to his proper care and treatment.

(3) The judge may make rules of court for the procedure to be followed for giving effect to a direction given under subsection (1) and the admission in evidence of a report as to the result of a test carried out in pursuance of such a direction, and such rules may provide for the payment of costs arising from or connected with the taking of blood tests.

Failure to comply with direction for blood test

8. (1) Where a court gives a direction under section 7(1) and any person fails to take any step required of him for the purpose of giving effect to that direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

(2) Where in any proceedings in which the paternity of any person falls to be determined, there is a presumption of law that a person is legitimate, then if—

(a) a direction is given under section 7(1); and

(b) any party who is claiming any relief in the proceedings, and who for the purpose of obtaining that relief is entitled to reply on the presumption, fails to take any step required of him for the purpose of giving effect to the direction;

the court may adjourn the hearing for such period as it thinks fit to enable that person to take that step, and if at the end of that period he has failed without reasonable cause to take it, the court may, without prejudice to subsection (1), dismiss his claim for relief notwithstanding the absence of evidence to rebut the presumption.

(3) Where any person named in a direction given under section 7(1) fails to consent to the taking of a blood sample from himself or from any person of whom he has the care and control, he shall be deemed for the purposes of this section to have failed to take a step required of him for the purpose of giving effect to that direction.

Penalty for personating another for purpose of providing blood sample

9. If, for the purpose of providing a blood sample for a test required in pursuance of a direction given under section 7, any person personates another or proffers a child knowing that the child is not the child named in the direction, he is guilty of an offence and is liable on summary conviction to imprisonment for 2 years or to a fine of $5,000 or to both.

Construction of Intestates Estates Act and instruments in conformity with that Act

10. In conformity with the provisions of this Act, the Intestates Estates Act shall have effect as if—

(a) any reference to the issue of an intestate included a reference to any illegitimate child of his and to the issue of any such child;

(b) any reference to the child or children of the intestate included a reference to any illegitimate child or children of his; and

(c) in relation to an intestate who was an illegitimate child, any reference to the parent, parents, father or mother or brother or sister of the intestate were a reference to his natural parent, parents, father or mother or brother or sister, as the case may be;

and any reference in section 8(1) of that Act to the construction of instruments in conformity with that Act shall, in relation to any instrument made *inter vivos* or to a will or codicil coming into operation after 1st January, 1983 (but not in relation to any such coming into operation before that date), be construed as including reference to this section.

Citation

11. This Act may be cited as the Law Reform (Illegitimacy) Act, Revised Statutes of Anguilla, Chapter L30.

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