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TURKS AND CAICOS ISLANDS

CHAPTER 11.07

ILLEGITIMACY ORDINANCE

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ILLEGITIMACY ORDINANCE

Ordinance 9 of 1978 ..in force 16 February 1979

No Subsidiary Legislation has been made under this Ordinance

Page

3

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CHAPTER 11.07

ILLEGITIMACY ORDINANCE

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Succession on intestacy in case involving illegitimate child
4. Presumption that references to children and other relatives include illegitimates and persons related through illegitimate link
5. Meaning of "child" or "issue" in section 33 of the Wills Act 1837
6. Protection of trustees and personal representatives
7. Amplification of particulars of registration of birth of illegitimate child in certain cases
8. Use of blood tests in determining paternity
9. Failure to comply with direction for blood test
10. Penalty for personating another for purpose of providing blood sample

CHAPTER 11.07

ILLEGITIMACY ORDINANCE

(Ordinance 9 of 1978)

AN ORDINANCE TO AMEND THE LAW RELATING TO THE PROPERTY RIGHTS OF ILLEGITIMATE CHILDREN AND OF OTHER PERSONS WHOSE RELATIONSHIP IS TRACED THROUGH AN ILLEGITIMATE LINK, TO MAKE PROVISIONS WITH RESPECT TO EVIDENCE IN CASES CONCERNED WITH PROOF OF PATERNITY, TO MAKE PROVISION FOR THE AMENDMENT OF THE REGISTRATION OF THE BIRTH OF AN ILLEGITIMATE CHILD IN CERTAIN CASES, AND FOR OTHER MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Commencement

[16 February 1979]

Short title

1. This Ordinance may be cited as the Illegitimacy Ordinance.

Interpretation

2. In this Ordinance, unless the context otherwise requires—

"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 the Islands, of parents who were not married to each other at the date of such birth, and, except for the purposes of section 3, includes a person who has been legitimated under the provisions of the Legitimation Ordinance, but does not include any person who, though born illegitimate, has been adopted under the provisions of the Adoption Ordinance; and grammatical variations and cognate expressions shall be construed accordingly.

Succession on intestacy in case involving illegitimate child

3. (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 purposes of subsection (2) and the provisions of the Intestacy Ordinance, an illegitimate child shall be presumed not to have been survived by his father unless the contrary is shown.

(4) This section does not apply to or affect the right of any person to take any entailed interest in real or personal property.

(5) This section does not affect any right under the intestacy of a person dying before the date of commencement of this Ordinance.

Presumption that references to children and other relatives include illegitimates and persons related through illegitimate link

4. (1) In any disposition made after the date of commencement of this Ordinance—

- (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) The provisions of subsection (1) shall apply only where the reference in question is to a person who is to benefit or to be capable of benefiting under the disposition concerned or, for the purpose of designating such a person, to someone else to or through whom that person is related; but that subsection does not affect the construction of the word "heir" or "heirs" or of any other expression which is used to create an entailed interest in real or personal property.

(3) This section is without prejudice to sections 15 and 16 of the Adoption Ordinance.

(4) There is hereby abolished, as respects any disposition made after the date of commencement of this Ordinance, 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.

(5) For the purposes of this section, and notwithstanding any rule of law to the contrary, a disposition made by will or codicil executed before the date of commencement of this Ordinance 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 33 of Wills Act 1837

5. In relation to a testator who dies having made a will dated after the date of commencement of this Ordinance, section 33 of the Wills Act 1837 (as amended and in force in the Islands under the provisions of the Wills Ordinance) 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 AM 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 anyone 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

6. Notwithstanding the foregoing provisions of this Ordinance, trustee 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 3, so far as it confers any interest on illegitimate children or their issue or on the father of an illegitimate child; or
- (b) section 4 or 5,

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 in certain cases

7. Notwithstanding the provisions of the Registration of Births, Deaths and Marriages Ordinance, in any case in which under that Ordinance 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 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

8. (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 two, of those persons:

Provided that the court may at any time revoke or vary any direction given under this subsection.

(2) Without prejudice to the provisions of section 9, 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; or
- (b) if he is under the age of sixteen 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 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

9. (1) Where a court gives a direction under section 8(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 8(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 rely on the presumption, fails to take any steps 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 8 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

10. If, for the purpose of providing a blood sample for a test required in pursuance of a direction given under section 8, any person personates another or professes a child knowing that it is not the child named in the direction, he commits an offence and is liable—

- (a) on summary conviction, to a term of imprisonment of six months or to a fine of \$500, or to both such fine and imprisonment or
- (b) on conviction before the Supreme Court, to a term of imprisonment of two years or to a fine of \$2,000, or to both such fine and imprisonment.