



Law Reform (Husband and Wife) Act (Northern Ireland) 1964

1964 CHAPTER 23

An Act to amend the law as to actions in tort between husband and wife; to extend the powers of the court under section 17 of the Married Women's Property Act 1882; to make provision with respect to certain contracts of insurance and other contracts for the benefit of a spouse or child and with respect to criminal proceedings by or against a spouse; and for purposes connected with matters aforesaid. [7th July 1964]

1 Application of Act.

- (1) Save where otherwise appears, this Act applies to persons whether married before or after the commencement of this Act.
- (2) Section 2 shall not apply to any cause of action in tort which arose, or would but for the subsistence of a marriage have arisen, before the commencement of this Act.

2 Actions in tort between husband and wife.

- (1) 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.
- (2) The reference in subsection (1) to the parties to a marriage includes a reference to the persons who were parties to a marriage which has been dissolved.

3^{F1} Extension of s. 17 of Married Women's Property Act.

- (1) Any right of a wife, under section 17 of the Married Women's Property Act 1882^{M1} to apply to a judge of the High Court or of a county court, in any question between husband and wife as to the title to or possession of property, shall include the right to make such an application where it is claimed by the wife that her husband has had in his possession or under his control—

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- (a) money to which, or to a share of which, she was beneficially entitled (whether by reason that it represented the proceeds of property to which, or to an interest in which, she was beneficially entitled, or for any other reason); or
- (b) property (other than money) to which, or to an interest in which, she was beneficially entitled;

and that either that money or other property has ceased to be in his possession or under his control or that she does not know whether it is still in his possession or under his control.

- (2) Where, on an application made to a judge of the High Court or of a county court under the said section 17 the judge is satisfied—

- (a) that the husband has had in his possession or under his control money or other property as mentioned in paragraph (a) or paragraph (b) of subsection (1); and
- (b) that he has not made to the wife, in respect of that money or other property, such payment or disposition as would have been just and equitable in the circumstances;

the power to make orders under that section shall be extended in accordance with subsection (3).

- (3) Where subsection (2) applies, the power to make orders under the said section 17 shall include power for the judge to order the husband to pay to the wife—

- (a) in a case falling within paragraph (a) of subsection (1), such sum in respect of the money to which the application relates, or the wife's share thereof, as the case may be; or
- (b) in a case falling within paragraph (b) of subsection (1), such sum in respect of the value of the property to which the application relates, or the wife's interest therein, as the case may be;

as the judge may consider appropriate.

- (4) Where on an application under the said section 17 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 section if an application had been made by the wife 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 (3)) may make any order under that section in respect of that property which he could have made on such an application as is mentioned in paragraph (b) of this subsection.

- (5) The preceding provisions of this section shall have effect in relation to a husband as they have effect in relation to a wife, as if any reference to the husband were a reference to the wife and any reference to the wife were a reference to the husband.

- (6) Any power of a judge under the said section 17 to direct inquiries or give any other directions in relation to an application under that section shall be exercisable in relation to an application made under that section as extended by this section; and the provisos to that section (which relate to appeals and other matters) shall apply in relation to any order made under the said section 17 as extended by this section as they apply in relation to an order made under that section apart from this section.

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- (7) For the avoidance of doubt it is hereby declared that any power conferred by the said section 17 to make orders with respect to any property includes power to order a sale of the property ...^{F2}.

F1 1978 NI 15 art.55

F2 1978 NI 15

Marginal Citations

M1 1882 c. 75

4 Insurance for benefit of spouse or children.

- (1) This section applies to a policy of life assurance or endowment expressed to be for the benefit of, or by its express terms purporting to confer a benefit upon, the wife, husband or child of the insured.
- (2) Such policy shall create a trust in favour of the objects therein named.
- (3) The moneys payable under the policy shall not, so long as any part of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.
- (4) If it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, on account of their debts, payment out of the moneys payable under the policy, so, however, that the total amount of such payments shall not exceed the amount of the premiums so paid.
- (5) 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 may from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or trustees thereof and for the investment of the moneys payable under the policy.
- (6) In default of any such appointment of a trustee, 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.
- (7) The receipt of a trustee or trustees duly appointed or, in default either of any such appointment or of notice thereof to the insurer, the receipt of the legal personal representative of the insured shall be a good discharge to the insurer for any sum paid by him under the policy.
- (8) This section applies whether the policy was effected before or after the commencement of this Act.

S. 5 rep. by 1999 c. 31

6 Meaning of “child” in sections 4 and 5.

- (1) For the purposes of sections 4 and 5—
 - (a) “child” includes stepchild, illegitimate child, adopted person and a person of whom,^{F3} ... the insured,^{F3} ..., is the lawful guardian;
 - (b) an illegitimate child shall be treated as the legitimate child of his mother and natural father; and

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- (c) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person.
- (2) In this section “adopted” includes:—
 - (a) adopted in pursuance of an adoption order made under the Adoption of Children Act (Northern Ireland) 1950 ^{F4} or any previous enactment relating to children or any corresponding enactment in force at the time of the adoption in any other part of the United Kingdom, or in the Channel Islands or the Isle of Man;
 - (b) adopted under the law for the time being in force in any other country where—
 - (i) under that law the adoption operates to effect substantially the same change in status, relative to one another, of the parties to the adoption as any adoption duly made pursuant to any such an order as is referred to in paragraph (a) would effect;
 - (ii) the parties to the adoption were then resident in that country.
- (3) For the purposes of any proceedings under section 4^{F3}... an adoption authorised by any such an order as is referred to in subsection (2)(a) may be proved by the production of any document which is receivable as evidence of the order in the country where the order is made.

F3 1999 c.31

F4 1967 c.35 (NI)

7 Criminal proceedings for protection of property of married persons.

- (1) Every married woman shall have in her own name against all persons whomsoever, including her husband, the same remedies and redress by way of criminal proceedings for the protection and security of her property as if she were unmarried.
- (2) A husband shall have against his wife the same remedies and redress by way of criminal proceedings for the protection and security of his property as if she were not his wife.
- (3) In any criminal proceedings to which this section relates brought against one spouse, the other spouse may, notwithstanding anything to the contrary in any enactment or rule of law, be called as a witness either for the prosecution or defence and without the consent of the person charged.
- (4) In any indictment or process grounding criminal proceedings in relation to the property of a married woman, it shall be sufficient to allege the property to be her property.

8 Saving as to pending proceedings.

Nothing in this Act shall affect any legal proceedings instituted before the commencement of this Act.

S. 9 rep. by SLR 1973

10 Short title.

This Act may be cited as the Law Reform (Husband and Wife) Act (Northern Ireland) 1964.

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Schedule rep. by SLR 1973

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