



PARLIMEN MALAYSIA



BILL

Legitimacy 1961

D.R.06/1961

A BILL

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intituled

D. R. No.

An Act to consolidate the law providing for the legitimation of children born out of wedlock.

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BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Legitimacy Act, 1961.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“date of legitimation” means the date of the marriage leading to the legitimation or, where the marriage occurred before the prescribed date, the prescribed date;

“disposition” means an assurance of any interest in property by any instrument, whether *inter vivos* or by will;

“intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his estate;

“legitimated person” means a person legitimated by this Act or by the Legitimacy Enactment of the Federated Malay States, the Legitimacy Enactment of the State of Johore, or the Legitimacy Ordinance of the Straits Settlements;

“prescribed date” means—

(a) in the case of the States of Perak, Selangor, Negri Sembilan and Pahang, the first day of January, 1933;

(b) in the case of the States of Johore, Malacca and Penang, the first day of July, 1936;

(c) in the case of the States of Kedah, Kelantan, Trengganu and Perlis the date of commencement of this Act;

“will” includes codicil.

(2) References in this Act to the Federation shall be construed in relation to any time before Merdeka Day as references to the territories now comprised in the Federation.

Conditions of application of Act.

3. (1) Nothing in this Act shall operate to legitimate a person unless the marriage leading to the legitimation was solemnised and registered in accordance with the provisions of the Civil Marriage Ordinance, 1952, or the Christian Marriage Ordinance, 1956, or any Enactment or Ordinance repealed by either of such Ordinances.

44/1952.
33/1956.

(2) Nothing in this Act shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born.

(3) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in property save as hereinafter in this Act expressly provided.

4. Subject to the provisions of section 3, where the parents of an illegitimate person marry or have married one another, whether before or after the prescribed date, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in the Federation, render that person, if living, legitimate from the prescribed date or from the date of the marriage, whichever be the later.

Legitimation by subsequent marriage of parents.

5. (1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in the Federation or elsewhere, apply by petition to the Supreme Court praying the Court for a decree declaring that the petitioner is the legitimate child of his parents, or that his parent or remoter ancestor was legitimate; and the Supreme Court shall have jurisdiction to hear and determine such application and to make such decree declaratory of the legitimacy or illegitimacy of such person as to the Court may seem just; and such decree shall be binding to all intents and purposes on all persons whomsoever.

Declarations of legitimacy of legitimated persons.

(2) Every petition under this section shall be accompanied by such affidavit verifying the facts alleged in the same, and by such proof of the absence of fraud or collusion, as the Court may by any general rule direct.

(3) In all proceedings under this section the Court shall have full power to award and enforce payment of costs to any persons cited, whether such persons shall or shall not oppose the declaration applied for, in case the said Court shall deem it reasonable that such costs should be paid.

(4) A copy of every petition under this section, and of the affidavit accompanying the same, shall, one month at least previously to the presentation or filing of such petition, be delivered to the Attorney-General, who shall be a respondent upon the hearing of such petition and upon every subsequent proceeding relating thereto.

(5) Where any application is made under this section to the said Court, such person or persons (if any) besides the said Attorney-General as the Court shall think fit shall,

subject to the rules made under this section, be cited to see proceedings, or otherwise summoned in such manner as the Court shall direct, and may be permitted to become parties to the proceedings, and oppose the application.

(6) The decree of the Court shall not in any case prejudice any person—

- (a) if it is subsequently proved to have been obtained by fraud or collusion; or
- (b) unless that person has been cited or made a party to the proceedings or is the heir-at-law, next-of-kin, or other real or personal representative of, or derives title under or through, a person so cited or made a party.

(7) No proceeding to be had under this section shall affect any final judgment or decree already pronounced or made by any Court of competent jurisdiction.

(8) The Rule Committee may make rules for carrying the provisions of this section into effect.

6. (1) Subject to the provision of this Act a legitimated person and his spouse, children or more remoter issue shall be entitled to take any interest—

- (a) in the estate of an intestate dying after the date of legitimation;
- (b) under any disposition coming into operation after the date of legitimation,

in like manner as if the legitimated person had been born legitimate.

(2) Where the right to any property depends on the relative seniority of the children of any person, and these children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they had been born on the day when he or they became legitimated by virtue of this Act, and if more than one such legitimated person became legitimated at the same time they shall rank as between themselves in order of seniority.

(3) This section applies only if and so far as a contrary intention is not expressed in the disposition, and shall have effect subject to the terms of the disposition and to the provisions contained therein.

7. Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of any of his property the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

Rights of legitimated persons to take interests in property.

Succession on intestacy of legitimated persons and their issue.

8. Where an illegitimate person dies after the prescribed date and before the marriage of his parents leaving any spouse, child or remoter issue living at the date of such marriage, then if that person would, if living at the time of the marriage of his parents, have become a legitimated person the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person shall apply as if such person as aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

Application to illegitimate person dying before marriage of parents.

9. A legitimated person shall have the same rights and be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and subject to the provisions of this Act the provisions of any written law relating to claims for damages, compensation, allowance, benefit or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

Personal rights and obligations of legitimated persons.

10. (1) Where the parents of an illegitimate person marry or have married one another, whether before, or after the prescribed date, and the father of the illegitimate person was or is, at the time of the marriage, domiciled in a country, other than the Federation, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall within the Federation be recognised as having been so legitimated from the prescribed date or from the date of the marriage, whichever be the later, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law.

Provisions as to persons legitimated by extraneous law.

(2) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person shall apply in the case of a person recognised as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognised; and accordingly this Act shall have effect as if references therein to a legitimated person included a person so recognised as having been legitimated.

Right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other.

11. (1) Where, on or after the prescribed date, the mother of an illegitimate child, such child not being a legitimated person, dies intestate as respects all or any of her property, and does not leave any legitimate issue her surviving, the illegitimate child, or if he is dead his issue, shall be entitled to take any interest therein to which he or his issue would have been entitled if he had been born legitimate.

(2) Where, on or after the prescribed date, an illegitimate child, not being a legitimated person, dies intestate as respects all or any of his property, his mother, if surviving, shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

Saving.

12. Nothing in this Act shall affect the operation or construction of any disposition coming into operation before the prescribed date, or affect any rights under the intestacy of a person dying before that date.

Repeal.
F.M.S.
Cap. 69;
S.S. Cap. 85;
Johore 19 of
1936.

13. The Legitimacy Enactment of the Federated Malay States, the Legitimacy Ordinance of the Straits Settlements and the Legitimacy Enactment of the State of Johore, are hereby repealed.



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EXPLANATORY STATEMENT

The above Bill is designed to consolidate the law relating to legitimacy in force in the States of Johore, Perak, Selangor, Negri Sembilan, Pahang, Malacca and Penang, and to extend that law throughout the Federation. The draft Bill is based upon the Enactment of the former Federated Malay States, referred to in *Clause 13*, and insofar as the States of Johore, Perak, Selangor, Negri Sembilan, Pahang, Malacca and Penang are concerned effects no change in the existing law on this subject, except in relation to *Clause 3*, which brings the existing law up-to-date by referring to the Civil Marriage Ordinance, 1952, and the Christian Marriage Ordinance, 1956.

2. The Bill is designed to apply to the whole of the Federation, however, and therefore to extend existing law to the States of Kedah, Perlis, Kelantan and Trengganu. In this context it is emphasised that the Bill (see *Clause 3*) will only operate to legitimate a person if the marriage leading to the legitimation was solemnised and registered in accordance with the provisions of either the Christian Marriage Ordinance, 1956, or the Civil Marriage Ordinance, 1952, under which no marriage where one of the parties thereto professes the Muslim religion may be solemnised or registered.

[CLR 5.]