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LAWS OF MALAYSIA

REPRINT

Act 60

LEGITIMACY ACT 1961

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LEGITIMACY ACT 1961

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LAWS OF MALAYSIA

Act 60

LEGITIMACY ACT 1961

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Act 60

LEGITIMACY ACT 1961

An Act to provide for the legitimation of children born out of wedlock.

[*Peninsular Malaysia—23 March 1961; Sabah and Sarawak—1 January 1972, P.U.(A)435/1971*]

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"legitimated person" means a person legitimated by this Act or by any of the written laws repealed by this Act, that is to say—

(a) the Legitimacy Enactment of the Federated Malay States [*Cap. 69*];

(b) the Legitimacy Enactment of the State of Johore [*En. 19 of 1936*]; and

(c) the Legitimacy Ordinance of the Straits Settlements [*Cap. 85*];

"prescribed date" means—

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

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(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, Terengganu and Perlis, the 23rd day of March 1961; and

(d) in the case of States of Sabah and Sarawak, the first day of January 1972;

"will" includes codicil.

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

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 solemnized and registered in accordance with—

(a) the Civil Marriage Ordinance 1952 [*Ord. No. 44 of 1952*]*, or the Christian Marriage Ordinance 1956 [*Ord. No. 33 of 1956*]*;

(b) the Christian Marriage Ordinance [*Cap. 24*]* or the Marriage Ordinance 1959 [*Ord. No. 14 of 1959*]*, of Sabah; or

(c) the Church and Civil Marriage Ordinance [*Cap. 92*]* of Sarawak,

or any Enactment or Ordinance repealed by any of the said Ordinances.

(2) (*Deleted by Act 164*).

(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.

**NOTE*—This Ordinance has been repealed by section 109 Law Reform (Marriage and Divorce) Act 1976 [*Act 164*] through Act A498 with effect from 15-08-1980 – *see* section 23 Act A498.

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Legitimation by subsequent marriage of parents

4. Subject to 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 Malaysia, render that person, if living, legitimate from the prescribed date or from the date of the marriage, whichever is the later.

Declarations of legitimacy of legitimated persons

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 Malaysia or elsewhere, apply by petition to the High 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 High Court shall have jurisdiction to hear and determine the application and to make a decree declaratory of the legitimacy or illegitimacy of that person as to the Court may seem just; and that decree shall be binding to all intents and purposes on all persons whomsoever.

(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 person cited, whether that person shall or shall not oppose the declaration applied for, in case the said Court shall deem it reasonable that the costs should be paid.

(4) A copy of every petition under this section, and of the affidavit accompanying the same, shall, not less than one month before the filing thereof, be delivered to the Attorney General, who shall be a respondent upon the hearing of the petition and upon every subsequent proceeding relating thereto.

(5) Where any application is made under this section to the Court, such person (if any) besides the 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

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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 Rules Committee may make rules for carrying the provisions of this section into effect.

Rights of legitimated persons to take interests in property

6. (1) Subject to 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

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subject to the terms of the disposition and to the provisions contained therein.

Succession on intestacy of legitimated persons and their issue

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.

Application to illegitimate person dying before marriage of parents

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 the 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 the person aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

Personal rights and obligations of legitimated persons

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 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.

Provisions as to persons legitimated by extraneous law

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 Malaysia, by the law of which the illegitimate person became legitimated by

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virtue of the subsequent marriage, that person, if living, shall within Malaysia be recognized 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 that person domiciled in a country in which legitimation by subsequent marriage was permitted by 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 recognized as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognized; and accordingly this Act shall have effect as if references therein to a legitimated person included a person so recognized 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, the child not being a legitimated person, dies intestate as respects all or any of her property, and does not leave any legitimate issue surviving her, 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.

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LAWS OF MALAYSIA

Act 60

LEGITIMACY ACT 1961

LIST OF AMENDMENTS

Amending law	Short title	In force from
P.U.(A)435/1971	Legitimacy Act (Extension) Order 1971	01-01-1972
Act 164	Law Reform (Marriage and Divorce) Act 1976	01-03-1982

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Act 60

LEGITIMACY ACT 1961

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
3	Act 164	01-03-1982