

CAYMAN ISLANDS



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**A BILL FOR A LAW TO REFORM THE LAW RELATING TO THE  
DISSOLUTION AND NULLITY OF MARRIAGE AND JUDICIAL  
SEPARATION; TO ABOLISH ACTIONS FOR ADULTERY; TO  
PROVIDE FOR COUNSELLING WITH A VIEW TO FACILITATING  
RECONCILIATION IN MATRIMONIAL CAUSES; AND, IN RELATION  
THERETO, FOR MATTERS CONNECTED WITH THE PARENTAL  
RIGHTS AND THE GUARDIANSHIP OF CHILDREN; TO REPEAL THE  
MATRIMONIAL CAUSES LAW (2005 REVISION); AND FOR  
INCIDENTAL AND CONNECTED PURPOSES**

## **THE MATRIMONIAL CAUSES BILL, 2018**

### **MEMORANDUM OF OBJECTS AND REASONS**

This Bill is a part of the family law reform project undertaken by the Law Reform Commission. The project also included the preparation of the Maintenance Bill, 2018 and the Family Property (Rights of Spouses) Bill, 2018. This Bill seeks to repeal and replace the Matrimonial Causes Law (2005 Revision) and received the most interest in the review, more particularly because of the recommended reforms to the grounds of divorce.

It was noted in the review that one of the distinct differences between the Matrimonial Causes Law (2005 Revision) and the legislation of several jurisdictions is that parties are still required in the Cayman Islands to provide fault-based grounds for divorce such as adultery, unreasonable behaviour and desertion. The Bill seeks to reform this area of the law and to provide a more modern and sole ground of divorce i.e. irretrievable breakdown.

The Bill covers the reform or introduction of a wide range of matters such as the promotion of reconciliation and mediation in matrimonial proceedings; protection of the interests of children in matrimonial proceedings; financial relief in the Islands after separation or divorce in another jurisdiction; repeal of actions and damages for adultery; pre-nuptial agreements and jurisdiction of the court in matrimonial proceedings.

#### **PART 1 - PRELIMINARY**

Clause 1 provides the short title to the legislation.

Clause 2 contains interpretation provisions. Of note are the definitions of “matrimonial home” and “matrimonial property” which were inserted after recommendations that greater certainty was needed in matrimonial proceedings as to what those terms mean.

Clause 3 defines child of a marriage.

Clause 4 provides that polygamous marriages are not recognised under the legislation.

Clause 5 provides that the Rules Committee of the Grand Court may make rules to give effect to the legislation.

Clause 6 provides for the grounds on which foreign marriages are recognised.

Clause 7 provides that the legislation will apply, except as otherwise provided, to proceedings started after the commencement of the legislation.

## **PART 2 - JURISDICTION IN MATRIMONIAL PROCEEDINGS**

Clause 8 deals with the jurisdiction of the court. Thus, for example, only the Grand Court will deal with matters arising in matrimonial causes which relate to the care, protection and supervision of children. A summary court may deal with those matters which are not considered principal relief. Principal relief would include an action for divorce, judicial separation or for an order for nullity of marriage.

Clause 9 sets out the principles to which the court must have regard when exercising jurisdiction under the legislation. These principles include the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life. The principles also include the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children.

Clause 10 provides that, except as otherwise provided, proceedings may be commenced and answered by petition.

Clause 11 provides for the staying and transfer of proceedings between courts.

Clause 12 provides for the transfer of certain proceedings in the summary court to the Grand Court where the respondent in answer to the application is seeking an order different from that which is requested in the original application. The proceedings to which this relates are parental responsibility proceedings and proceedings relating to property valued in excess of fifty thousand dollars.

Clause 13 provides that all courts having jurisdiction under the legislation must assist each other in all matters. This relates to the situation where two different levels of courts are dealing with different matters relating to the same parties.

## **PART 3 - APPOINTMENT OF MARRIAGE COUNSELLORS AND FAMILY DISPUTE RESOLUTION PRACTITIONERS**

This Part deals with the appointment of marriage counsellors and family dispute practitioners to provide reconciliation and mediation services to parties to matrimonial proceedings.

Clause 14 provides that counselling services shall be provided by approved marriage counsellors and that family dispute resolution practitioners will provide family dispute resolution.

Clause 15 provides for the registration by the Attorney General of approved marriage counsellors and family dispute resolution practitioners.

Clause 16 provides that the Attorney General may revoke the registration of a marriage counsellor or a family dispute resolution practitioner in certain circumstances.

Clause 17 provides for the publication of the names of persons registered under clause 15 as well as the names of those whose registration has been revoked.

#### **PART 4 - RECONCILIATION, COUNSELLING AND FAMILY DISPUTE RESOLUTION**

This Part provides details of the reconciliation, counselling and dispute resolution process as they relate to matrimonial proceedings.

Clause 18 provides interpretation for this Part of the legislation.

Clause 19 deals with reconciliation of parties to matrimonial proceedings and provides that a judge may, during such proceedings, adjourn the proceedings to give parties the opportunity to consider reconciliation if, in his opinion, such reconciliation is possible due to their attitudes towards each other in the proceedings or due to other evidence. The judge may advise them to meet with an approved marriage counsellor or with some other person recommended by the parties. If they cannot reconcile then the hearing shall be resumed as soon as practicable.

Clause 20 provides that proceedings may be adjourned to enable parties and any children to have access to counselling and dispute resolution.

Clause 21 provides that a direction by the court under clause 20 to attend counselling or dispute resolution may require parties to encourage the participation in such counselling or resolution by others who may be affected by the matrimonial proceedings. Such other persons may include grandparents or other relatives.

Clause 22 imposes a duty on attorneys-at-law to ensure that the spouses for whom they are acting are informed of facilities that exist for reconciliation and that they take such steps as, in the opinion of the attorney-at-law, may assist in promoting reconciliation.

Clause 23 provides that the Clerk of the Court or another officer of the court may advertise the existence or availability of counselling, dispute resolution or other welfare facilities of the court.

In accordance with clause 24 a spouse may seek counselling or dispute resolution assistance on his or her own initiative.

Clause 25 provides that rules may provide for the furnishing to potential parties of documents setting out-

- (a) the legal and possible social effects of the proposed proceedings (including the consequences for the children of the marriage); and
- (b) the counselling, dispute resolution and other welfare facilities available within the court and elsewhere.

Clause 26 provides for a certain amount of confidentiality of communications in counselling services. An approved marriage counsellor may disclose communications in specified circumstances which include where the disclosure is necessary for the protection of a child from the risk of harm or for the prevention or lessening of a serious and imminent threat to the life or health of a person.

Clause 27 deals with the admissibility in court of communications in counselling and in referrals from other professionals.

Clause 28 provides for a certain amount of confidentiality of communications in family dispute resolutions. A family dispute resolution practitioner may disclose communications in specified circumstances which include where the disclosure is necessary for the protection of a child from the risk of harm or for the prevention or lessening of a serious and imminent threat to the life or health of a person.

Clause 29 deals with the admissibility in court of communications in family dispute resolutions and in referrals from other professionals.

Clause 30 makes it an offence to disclose communications contrary to clauses 26 and 28.

Clause 31 mandates that approved marriage counsellors and family dispute resolution practitioners shall take the oath prescribed in the Schedule prior to entering upon the performance of their functions.

## **PART 5 - NULLITY, DIVORCE AND OTHER MATRIMONIAL CAUSES**

Clause 32 sets out the grounds for pronouncing nullity of marriage. A decree of nullity may be pronounced on any of the following grounds -

- (a) such marriage is void;
- (b) one of the spouses was, at the time of the marriage, physically incapable of consummating the marriage and remains so incapable;
- (c) the marriage has not been consummated by reason of the wilful refusal of the respondent to consummate the marriage;
- (d) that either spouses was, at the time of the marriage, of unsound mind, mentally challenged or subject to recurrent fits of insanity or epilepsy;
- (e) the respondent was at the time of the marriage suffering from a venereal disease in a communicable form; or
- (f) the respondent was at the time of marriage pregnant by some person other than the petitioner.

Clause 33 provides that a petition for a decree of dissolution of marriage may be presented on the ground that the marriage is irretrievably broken down. This changes the law fundamentally in that the current Matrimonial Causes Law sets out fault based grounds for divorce or separation of two or five years. Irretrievable breakdown is required to be evidenced by at least twelve months' separation prior to the filing of the petition.

Clause 34 defines separation for the purposes of clause 33.

Clause 35 deals with the effect on a petition for dissolution of the resumption of cohabitation.

Clause 36 deals with judicial separation.

Clause 37 imposes a restriction on the making of a petition for divorce- such a petition must not be presented unless one year has elapsed since the date of the marriage.

Clause 38 deals with presumption of death and dissolution of marriage. Where a spouse has been continually absent for seven years and the petitioner has no reason to believe that his or her spouse is living during such period that absence shall be evidence of death until the contrary is proved.

Clause 39 provides that the court shall not make a decree of dissolution where there is before it an application for nullity.

Clause 40 provides that a decree under this Part of the legislation may be made or refused by the court on facts and circumstances, notwithstanding that those facts and circumstances, or some of them, occurred before the date of commencement of this legislation or outside the Islands.

Clause 41 provides that the court must satisfy itself that there is no collusion in relation to the petition for a decree.

Clause 42 provides that parties may make maintenance or marriage agreements for the purpose of facilitating proceedings but they are required to make full and frank disclosure of such agreements to the court.

Clause 43 deals with impediments to the grant of a decree. A court may refuse to grant a decree where, for example, there has been unjustifiable delay in the presentation of the petition or where matters relating to minor children of a marriage have not been resolved.

Clause 44 provides for the effective date of the decree of nullity, divorce and separation.

Clause 45 provides the effect of a decree of dissolution of marriage.

Clause 46 provides the effects of other decrees other than a decree of dissolution.

### **PART 6 - INJUNCTIONS AND OTHER ORDERS**

Part 6 contains clause 47 which sets out certain types of ancillary orders a court may make in matrimonial proceedings. These include orders under the Protection From Violence Law, an order in relation to the use of a matrimonial home and an order in relation to the property of a spouse.

### **PART 7 - WELFARE AND PARENTAL RESPONSIBILITY OF CHILDREN IN MATRIMONIAL PROCEEDINGS**

Clause 48 provides certain definitions for the purpose of this Part.

Clause 49 provides that a court may take into account a maintenance agreement entered into by the spouses in relation to a child of the marriage in matrimonial proceedings.

Clause 50 empowers the court to only grant a decree of separation, nullity or divorce after matters relating to a child of the marriage have been settled by the parties.

Clause 51 empowers the court to make an order directing parties to attend a conference with persons such as social workers, probation officers etc. where the welfare of the child is relevant.

Clause 52 provides that in matrimonial proceedings the court may make orders under the Children Law with respect to the care of a child of the marriage.

Clause 53 provides for separate representation of a child of a marriage in proceedings where the court thinks that this is necessary.

Clause 54 provides that the court may proceed with the hearing of proceedings relating to a child even though the person by whom the proceedings were instituted has failed to comply with an order of the court or of another court of competent jurisdiction.

Clause 55 deals with circumstances where a person does not comply with a parental responsibility order issued by the court.

#### **PART 8 - MAINTENANCE AND OTHER FINANCIAL PROVISIONS**

Clause 56 provides that for the purposes of this Part of the legislation “spouse” includes a former spouse. Clause 2 defines “spouse” to mean either of two persons of the opposite sex who are married to each other.

Clause 57 provides that a decree for divorce or separation shall not be granted unless financial arrangements relating to the spouses have been finalised. However, where there are no children of the marriage and upon the application of the spouse who is required to make financial provision for the other spouse, the court may, if it thinks fit, proceed with the grant of a decree if -

- (a) it appears that there are circumstances making it desirable that the decree should be granted without delay; and
- (b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.

Clause 58 empowers the court, inter alia, to make an order for maintenance before, by or after a final decree. The Maintenance Law shall apply in relation to the maintenance of a spouse and the Children Law in relation to maintenance of children. The clause makes it clear that the liability of a spouse to maintain the other spouse arises only where the other spouse is unable to support herself or himself adequately.

Clause 59 empowers the court to make urgent maintenance orders where the court is of the view that the spouse or a child of the marriage is in immediate need of financial assistance.



Clause 60 provides that each spouse is, subject to the provisions of the Family Property (Rights of Spouses) Law, entitled to one-half share of the matrimonial home on the grant of a decree of divorce, separation or nullity.

Clause 61 empowers the court to make an order relating to the use of the matrimonial home and other property pending the final decree.

Clause 62, unlike the current Law, enables a spouse to apply up to twelve months after a decree for an order of division of the matrimonial home and other property.

Clause 63 allows the court to set aside orders relating to division of property and to make alternative orders. In exercising its powers under this clause, the court shall have regard to the interest of, and shall make an appropriate order for the protection of, a purchaser in good faith or other interested person.

Clause 64 gives legislative recognition of marriage and maintenance agreements in matrimonial proceedings. The provisions of the Maintenance Law shall apply to maintenance agreements and the Family Property (Rights of Spouses) Law shall apply to marriage agreements.

Clause 65 provides for the registration of maintenance and marriage agreements.

Clause 66 provides that a registered maintenance or marriage agreement can be enforced as if it is an order of the court.

Clause 67 sets out the general powers of the court in matrimonial proceedings. Such powers include -

- (a) ordering payment of a lump sum, whether in one amount or by installments;
- (b) ordering payment of a weekly, monthly, yearly or other periodic sum;
- (c) ordering that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs; and
- (d) ordering that any necessary deed or instrument be executed, and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order.

Clause 68 introduces a power of the court to end financial relations, a power which was called for during the review of the Laws. In accordance with clause 68, in relation to the spouses, other than proceedings relating to an order altering the interests of the spouses in matrimonial and other property under clause 62(1)(c) or proceedings in respect of maintenance payable during the subsistence

of a marriage, the court shall, as far as practicable, make such orders as will finally determine the financial relationships between the spouses and avoid further proceedings between them.

Further, where the court decides to make periodical payments or secured periodical payments order in favour of a spouse, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would, in the opinion of the court, be sufficient to enable the spouse in whose favour the order is made, to adjust without undue hardship to the termination of the spouse's dependence on the other party.

Clause 69 provides that in matrimonial proceedings, the Children Law shall apply to the variation and cessation of a maintenance order made in respect of a child.

Clause 70 provides that in matrimonial proceedings the Maintenance Law shall apply in relation to the variation and cessation of a maintenance order relating to a spouse.

Clause 71 provides for the execution of instruments by order of the court. Thus for example, if an order under this Part of the legislation has directed a person to execute a deed or instrument the court may direct the Clerk of the Court or other authorised person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

Clause 72 empowers the court to set aside or restrain the making of an instrument or disposition in the interest of a spouse where such instrument or disposition is made to defeat an order for costs or maintenance or other money or property order in matrimonial proceedings.

Clause 73 provides for the making of Rules of Court to apply to overseas maintenance and marriage agreements.

#### **PART 9 - FINANCIAL RELIEF IN THE ISLANDS AFTER OVERSEAS DIVORCE ETC.**

Clause 74 provides for the making of an application for financial relief by a spouse in the case where his divorce, annulment or separation was adjudicated and finalised overseas.

Clause 75 provides that the court must grant leave for an application to be made under this Part.

Clause 76 provides for the making of interim orders under this Part where it appears to the court that the applicant or any child of the marriage is in immediate need of financial assistance.

Clause 77 sets out the grounds on which the court has jurisdiction under this Part of the legislation. Such grounds include domicile in the Islands of one of the spouses and ordinary residence of one of the spouses in the Islands for a period of one year ending with the date of the application for leave under this Part.

Clause 78 provides that the court must, before making an order for financial relief, consider whether in all the circumstance of the case it would be appropriate for such an order to be made. Some of the matters to be considered include -

- (a) the connection which those spouses have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
- (b) the connection which those spouses have with any other country outside the Islands; and
- (c) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside the Islands.

Clause 79 provides that the court may make orders similar to those which can be made as if the decree had been granted in the Islands. Such orders include maintenance orders and orders relating to rights to property other than the matrimonial home.

Clause 80 provides, among other things, that in making an order under clause 79, the welfare of the child of a marriage shall be given first consideration. Further, when considering the issue of a maintenance order, the court must also take into account relevant matters set out in the Maintenance Law.

Clause 81 provides that the court may grant a consent order for financial relief under this Part.

Clause 82 restricts the type of orders which may be made where the court has jurisdiction of the matter by reason only of the location in the Islands of a dwelling house which was the matrimonial home of the spouses.

Clause 83 provides that clause 68, which deals with transactions to defeat claims, apply to an application for financial relief.

Clause 84 provides interpretation of certain terms used under this Part.

#### **PART 10 - MATRIMONIAL PROPERTY AND CREDITORS**

Clause 85 provides that section 17 and 18 of the Family Property (Rights of Spouses) Law apply in matrimonial proceedings. Such provisions relate to the protection of creditors and persons other than spouses having any interests in the matrimonial property and the matrimonial home.

#### **PART 11 - APPEALS**

Clause 86 provides that either spouse, may appeal a decree or order made in a matrimonial matter in respect of any matter of law or of mixed fact and law.

Clause 87 sets out the powers of a court in an appeal.

#### **PART 12 - PROCEDURE AND EVIDENCE**

Clause 88 provides that, subject to this legislation and the rules, all proceedings under this legislation shall be heard in closed court. A court has the power under this clause to exclude specified persons from proceedings or from part of proceedings.

Clause 89 provides for the examination of a petitioner.

Clause 90 provides for the giving of evidence by way of affidavit.

Clause 91 provides that a child, other than a child who is or is seeking to become a party to proceedings, shall not swear to an affidavit, unless the court makes an order allowing the child to do so.

Clause 92 provides for the giving of DNA evidence by order of the court in order to prove parentage in matrimonial proceedings.

Clause 93 provides, inter alia, that the court shall forbid the asking of offensive, scandalous, insulting or humiliating questions to a witness.

Clause 94 provides that the court may accept original or certified copies of birth, marriage or death certificate or original or certified copy of entries or records of birth, death or marriages.

### **PART 13 - RECOGNITION OF DECREES**

Clause 95 provides interpretation of terms used under this part of the legislation.

Clause 96 sets out the grounds on which a dissolution or annulment of marriage overseas shall be recognised in the Islands. Such grounds include -

- (a) the respondent was ordinarily resident in the overseas country at the relevant date;
- (b) the applicant was ordinarily resident in the overseas country at the relevant date and either -
  - (i) the ordinary residence of the applicant had continued for not less than one year immediately before the relevant date; or
  - (ii) the last place of cohabitation of the spouses was in that country; or
- (c) the applicant or the respondent was domiciled in the overseas country at the relevant date.

Clause 97 provides the grounds on which a dissolution or annulment overseas shall not be recognised in the Islands.

Clause 98 provides for the recognition of a dissolution or annulment which would be valid under the common law rules of private international Law.

Clause 99 gives the court the power to treat facts as proved where they have been proved by a court of a relevant overseas country.

Clause 100 allows persons to re-marry in these Islands if the court here finds a relevant divorce or annulment valid but such dissolution or annulment is not recognised by some other country.

Clause 101 provides how this part of the legislation applies to dissolution or annulments which take place before or after the commencement of this legislation.

### **PART 14 - MISCELLANEOUS**

Clause 102 abolishes action for damages for adultery after the commencement of the legislation.

Clause 103 deals with the enforcement of decrees of the court having jurisdiction.

Clause 104 provides that rules shall be promulgated to deal with methods of enforcement of decrees.

Clause 105 provides that a person who owes for maintenance may have such debt deducted from his or her salary or wages.

Clause 106 deals with the matter of payment of costs in proceedings under this legislation.

Clause 107 empowers the court at any stage of proceedings to dismiss the proceedings if it is satisfied that the proceedings are frivolous or vexatious.

Clause 108 repeals the Matrimonial Causes Law (2005 Revision).

Clause 109 provided for the making of regulations by Cabinet to give effect to the legislation. Clause 109 also provides for the continued operation of current rules until rules are made under the legislation.

Clause 110 provides that any matrimonial or other proceedings commenced but not concluded before the date of the commencement of this legislation shall be continued and completed after such date in accordance with the legislation.

The Schedule contains the oath or affirmation of secrecy to be taken by approved marriage counsellors and family dispute practitioners.

**THE MATRIMONIAL CAUSES BILL, 2018**

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CAYMAN ISLANDS

**A BILL FOR A LAW TO REFORM THE LAW RELATING TO THE DISSOLUTION AND NULLITY OF MARRIAGE AND JUDICIAL SEPARATION; TO ABOLISH ACTIONS FOR ADULTERY; TO PROVIDE FOR COUNSELLING WITH A VIEW TO FACILITATING RECONCILIATION IN MATRIMONIAL CAUSES; AND, IN RELATION THERETO, FOR MATTERS CONNECTED WITH THE PARENTAL RIGHTS AND THE GUARDIANSHIP OF CHILDREN; TO REPEAL THE MATRIMONIAL CAUSES LAW (2005 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART 1- PRELIMINARY**

1. (1) This Law may be cited as the Matrimonial Causes Law, 2018.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet, and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. In this Law -

Interpretation

“adopted” means adopted in pursuance of an adoption order made under the Adoption of Children Law (2003 Revision), or in pursuance of an adoption order made in a country other than the Islands and recognised by the Adoption of Children Law (2003 Revision), as conferring upon the child in question, in

(2003 Revision)

relation to the child's custody, maintenance and education, the status of a child of the adopter or adopters;

“adopter” means a person who is proposing to adopt, or who has adopted, a child in pursuance of an adoption order;

“approved marriage counsellor” means a person who has been approved as such pursuant to section 15;

“business assets” means real or personal property primarily used or held for or in connection with a commercial, business, investment or other income-producing or profit-producing purpose, but does not include money in an account with a chartered bank, savings office, loan company, credit union, trust company or similar institution where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes;

(2003 Revision)

(2015 Revision)

“Caymanian” means a person who possesses Caymanian status under the repealed Immigration Law (2003 Revision) or any earlier law providing for the same or similar rights, and includes a person who acquired that status under Part III of the Immigration Law (2015 Revision);

“child” means a person under the age of eighteen and includes an adopted child and a child of a void marriage;

(2013 Revision)

“Class A bank” means a bank licensed under the Banks and Trust Companies Law (2013 Revision) to carry on the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account, money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise;

“court”, in relation to any proceedings, means the court exercising jurisdiction in those proceedings by virtue of this Law;

“counselling” means a process in which an approved marriage counsellor helps -

- (a) one or more persons to deal with personal and interpersonal issues in relation to marriage; or
- (b) one or more persons, including children, who are affected, or likely to be affected, by separation or divorce to deal with either or both of the following -
  - (i) personal and interpersonal issues; and
  - (ii) issues relating to the care of children;

“family dispute resolution practitioner” means a person who is authorised by the Grand Court under this Law to act as a family dispute resolution practitioner;

“family dispute resolution” is a process (other than a judicial process) -

- (a) in which a family dispute resolution practitioner helps persons affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and
- (b) in which the practitioner is independent of all of the parties involved in the process;

“maintenance agreement” means an agreement in writing entered into by spouses with each other for the purposes of facilitating the settlement of their affairs relating to the marriage and such agreement may provide for -

- (a) support rights and obligations of the spouses with respect to each other or any child of the marriage that either spouse has an obligation to maintain under the Children Law (2012 Revision); and
- (b) the right to direct the education and other training of their children, but not the right to custody of or access to their children;
- (c) the management of financial matters and assets during their marriage; or
- (d) any other matter in the settlement of the affairs of the spouses, including an agreement that varies an earlier maintenance agreement;

(2012 Revision)

“marriage agreement” means an agreement in writing entered into by persons before or during their marriage to take effect on the date of their marriage or on the date of execution of the agreement, whichever is later, for the ownership in, or division of, matrimonial or other property on the making of an order for dissolution of marriage, judicial separation or a declaration of nullity of marriage and which complies with the provisions of the Family Property (Rights of Spouses) Law, 2018;

“matrimonial causes” means -

- (a) proceedings between spouses for a decree of -
  - (i) dissolution of marriage;
  - (ii) nullity of marriage; or
  - (iii) judicial separation;
- (b) proceedings for a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage by decree or otherwise;
- (c) proceedings for a declaration of presumption of death;

- (d) proceedings between spouses in respect of-
  - (i) the maintenance of one of the spouses; or
  - (ii) the parental responsibility for, guardianship or maintenance of, or access to, a child of the marriage;
- (e) proceedings between spouses in respect of the property of those spouses, or either of them, being proceedings in relation to concurrent, pending or completed proceedings for principal relief between the spouses;
- (f) proceedings under Part 9;
- (g) proceedings by or on behalf of a child of a marriage against one or both of the spouses in respect of the maintenance of the child;
- (h) proceedings between spouses for the approval by the court of a maintenance or marriage agreement or for the revocation of such an approval, or for the registration of a maintenance or marriage agreement;
- (i) proceedings between the spouses for an order or injunction in circumstances arising out of the marital relationship; and
- (j) any other proceedings, including proceedings in respect of the enforcement of a decree or the service of process, in relation to concurrent, pending, or completed proceedings of a kind mentioned in paragraphs (a) to (h) of this definition, including proceedings of such a kind pending at, or completed before the commencement of this Law;

“matrimonial home” means the dwelling-house that is owned by either or both spouses and used habitually or from time to time by the parties as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household;

“matrimonial proceedings” means proceedings in which matrimonial causes are adjudicated;

“matrimonial property” means -

- (a) the matrimonial home or homes whenever acquired and all other real and personal property acquired by either or both spouses during their marriage, with the exception of -
  - (i) gifts, inheritances, trusts or settlements received by one spouse from a person other than the other spouse except to the extent to which they are used for the benefit of both spouses or their children;
  - (ii) an award or settlement of damages in court in favour of one spouse;

- (iii) money paid or payable to one spouse under an insurance policy;
  - (iv) reasonable personal effects of one spouse;
  - (v) business assets acquired before the marriage;;
  - (vi) property exempted under a marriage agreement or separation agreement; and
  - (vii) real and personal property acquired after separation (not using matrimonial funds) unless the spouses resume cohabitation and
- (b) real and personal property acquired before the marriage by either spouse where such property was acquired in contemplation of the marriage, has been subsequently used for the benefit of the family or has increased in value by the intermingling with other matrimonial property;

“overseas country” means a country, or part of a country, outside the Islands;

“parental responsibility” has the meaning assigned by section 5 of the Children Law (2012 Revision); (2012 Revision)

“proceedings for principal relief” means proceedings under this Law of a kind mentioned in paragraph (a), (b) or (c) of the definition “matrimonial causes”;

“professional” means a person to whom an approved marriage counsellor or a family dispute resolution practitioner refers a person for medical or other professional consultation;

“property” means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled;

“rules” means Rules of Court made under this Law by the Rules Committee of the Grand Court for the purposes of this Law; and

“spouse” means either of two persons of the opposite sex who are married to each other.

3. (1) For the purposes of the application of this Law in relation to a Children of the marriage marriage -

- (a) a child adopted since the marriage by the spouses; or
- (b) a child of the spouses born before the marriage,

is deemed to be a child of the marriage, and a child of the spouses (including a child born before the marriage) who has been adopted by another person is deemed not to be a child of the marriage.

(2) For the purposes of the application of section 50 -

- (a) a child adopted since the marriage by either spouse with the consent of the other; or
- (b) a child of either spouse (including an ex-nuptial child of either of them) if, at the relevant time, the child was ordinarily a member of the household of the spouse,

is deemed to be a child of the marriage.

(3) Relevant time means for the purposes of subsection (2)(b) -

- (a) the time immediately preceding the time when the spouses separated; or
- (b) if they have separated on more than one occasion, the time immediately preceding the time when they last separated before the institution of the proceedings for dissolution of the marriage.

(4) Subsection (1) applies in relation to a purported marriage that is void as if the purported marriage were a marriage.

(5) If -

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married; and
- (b) the woman and her spouse consented to the carrying out of the procedure, and any other person who provided genetic material used in the procedure consented to the use of the material in an artificial conception procedure,

then, whether or not the child is biologically a child of the woman and of the spouse, for the purposes of this Law -

- (c) the child is the child of the woman and of the spouse and is a child of the marriage; and
- (d) if a person other than the woman and the other intended parent provided genetic material or provided genetic material and surrogacy services by giving birth to the child for the woman and the other intended parent, then the child is not the child of that person.



(6) If a child is born to a woman as a result of the carrying out of an artificial conception procedure then whether or not the child is biologically a child of the woman, the child is her child for the purposes of this Law.

(7) If a child is born to a woman as a result of the carrying out of an artificial conception procedure then, whether or not the child is biologically a child of the man, the child is his child for the purposes of this Law.

(8) For the purposes of subsection (5), a person is to be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities, that the person did not consent.

4. For the purpose of proceedings under this Law, a union in the nature of a marriage that is, or has at any time, been polygamous, being a union entered into in a place outside the Islands, is not deemed to be a marriage for the purposes of this Law.

Polygamous marriages

5. (1) The Rules Committee of the Grand Court may make rules-

Rules of Court

- (a) prescribing all matters that are by this Law required to be prescribed by rules; and
- (b) generally for carrying out or giving effect to the purposes of this Law.

(2) Rules may make provision for or in relation to the practice and procedure to be followed in the court and for the conduct of the business of the court; and, without limiting the generality of this subsection, the rules may make provision for or in relation to -

- (a) the attendance of witnesses;
- (b) providing for the manner of service of process of the court and for dispensing with such service;
- (c) the enforcement and execution of the decrees of the court;
- (d) the time and manner of instituting appeals;
- (e) the duties of officers of the court;
- (f) prescribing matters relating to the cost of proceedings and the assessment or taxation of those costs;
- (g) authorising the court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court;
- (h) authorising an officer making an investigation referred to in paragraph (g) to take evidence on oath or affirmation, and to obtain and receive in evidence a report from a social worker or probation officer, and enabling the summoning of witness before

an officer making such an investigation for the purpose of giving evidence or producing books and documents;

- (i) regulating the procedure of the court upon receiving a report of an officer who has made an investigation referred to in paragraph (g); and
- (j) prescribing matters incidental to the matters specified in the preceding paragraphs.

(3) Pending the making of any rule or order in any particular matter the practice and procedure of the court as exists at the date of the commencement of this Law, shall, subject to any necessary modifications and adaptations, be applicable to matters arising under this Law.

Foreign marriages

6. The court will recognise a marriage celebrated outside the Islands upon being satisfied that the marriage was in fact celebrated in accordance with the law of the place of such celebration unless, in accordance with sections 4 and 32, such marriage is proved to be void.

Application

7. This Law applies, except as otherwise provided, to proceedings instituted on or after the date of commencement of this Law.

## **PART 2- JURISDICTION IN MATRIMONIAL PROCEEDINGS**

Jurisdiction

8. (1) The Grand Court has jurisdiction in -

- (a) matrimonial causes instituted or continued under this Law;
- (b) matters arising in matrimonial causes related to the guardianship, custody or maintenance of children; and
- (c) such matters in respect of which jurisdiction is conferred on it by this Law, rules and regulations made under this Law.

(2) The Grand Court has in addition to the jurisdiction under subsection (1) all of the powers of the High Court of England and Wales necessary to enable it to exercise the jurisdictions conferred upon it by this Law.

(3) Proceedings for a decree of dissolution of marriage or decree of nullity or separation may be instituted under this Law by a spouse if, at the date on which the application for the decree is filed in the court, either spouse -

(2011 Revision)

- (a) is Caymanian; or
- (b) is resident in the Islands at the date of commencement of the proceedings and has been resident in the Islands for a period of not less than one year immediately preceding that date.

(4) In proceedings under section 38(1) the court has jurisdiction if the petitioner -

- (a) is Caymanian; or
- (b) is resident in the Islands at the date of commencement of the proceedings and has been resident in the Islands for a period of not less than one year immediately preceding that date.

(5) Subject to this Part, a summary court is invested with jurisdiction to hear and determine -

- (a) matrimonial causes, not being proceedings for principal relief nor proceedings within paragraphs (f) and (h) of the definition “matrimonial causes” in section 2(1), instituted under this Law;
- (b) matrimonial causes, not being proceedings for principal relief, continued in accordance with section 109; and
- (c) proceedings instituted under rules made for the purposes of section 104.

(6) The Grand Court has jurisdiction to determine the validity of a marriage as provided for in this Law.

(7) A husband or wife who has been divorced by a foreign court, the decree of which is not recognised by the laws of the Islands, may petition for divorce under this Law in the same manner as any other person entitled to apply under this Law.

9. In the exercise of its jurisdiction under this Law or any other enactment, the court shall have regard to the following principles -

Principles to be applied by the court

- (a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
- (b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
- (c) the need to protect the rights of children and to promote their welfare;
- (d) the need to ensure safety from family violence; and
- (e) the need to provide means for assisting spouses to consider reconciliation or the improvement of their relationship with each other and with the children of the marriage.

10. (1) Except as otherwise provided or prescribed, proceedings under this Law shall be instituted by petition.

Institution of proceedings

(2) A spouse may, in answer to a petition, include a petition for any decree or declaration under this Law.

Staying and transfer of proceedings

11. (1) Where there are pending, in a summary court, proceedings that have been instituted under this Law or rules and it appears to that court that other proceedings that have been so instituted, or are being so continued, in relation to the same marriage or void marriage, or the same matters are pending in the Grand Court, the summary court may stay the first-mentioned proceedings for such time as it thinks fit, or may dismiss the proceedings.

(2) Where there are pending in a summary court proceedings that have been instituted under this Law or rules, and it appears to that court that it is in the interests of justice that the proceedings be dealt with in another court having jurisdiction under this Law, that court may transfer the proceedings to the other court.

Transfer of proceedings from courts of summary jurisdiction

12. (1) Where proceedings are instituted in a summary court in respect of -

- (a) the parental responsibility for, or guardianship of, or access to, a child of a marriage; or
- (b) property of a value exceeding fifty thousand dollars,

and the respondent, in an answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application, the court shall, unless the parties agree to the court hearing and determining the proceedings, transfer the proceedings to the Grand Court.

(2) Where proceedings referred to in subsection (1) are before it, the court may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the court to hear and determine the proceedings.

(3) Before transferring proceedings under subsection (1), the court may make such orders as it considers necessary, pending the disposal of the proceedings by the court to which they are to be transferred.

Courts to act in aid of each other

13. All courts having jurisdiction under this Law shall severally act in aid of, and be auxiliary to, each other in all matters under this Law.

**PART 3- APPOINTMENT OF MARRIAGE COUNSELLORS AND FAMILY DISPUTE RESOLUTION PRACTITIONERS**

Counselling and dispute resolution by approved marriage counsellors and family dispute resolution practitioners

14. (1) Counselling services as a facility for reconciliation in matrimonial causes shall be provided by approved marriage counsellors.

(2) Family dispute resolution shall be provided by family dispute resolution practitioners.

15. (1) A person may apply in writing to the Attorney General to be registered as an approved marriage counsellor or a family dispute resolution practitioner.

Approval of marriage counsellors and family dispute resolution practitioners

(2) An application under subsection (1) shall be accompanied by the prescribed fee, if any.

(3) The Attorney General may approve the registration of any person as a marriage counsellor or a family dispute resolution practitioner where the Attorney General, pursuant to regulations made under subsection (6), is satisfied that that person is qualified by training or experience to offer marriage counselling or dispute resolution services to the public and such approval shall be given in the prescribed form to the person.

(4) The Attorney General may attach such conditions to the approval for the registration of a person under this section as he thinks fit, and may, from time to time, in accordance with prescribed procedure, revoke or vary all or any of those conditions or add further conditions.

(5) Registration shall be for a period of three years and may be renewed.

(6) The Cabinet may make regulations in relation to the qualifications and registration and of marriage counsellors and family dispute resolution practitioners and matters related thereto.

16. The Attorney General may revoke the registration of an approved marriage counsellor or a family dispute resolution practitioner where -

Grounds for revocation

- (a) the person has not complied with any one or more of the conditions attaching to the grant of the approval for registration;
- or
- (b) the Attorney General is satisfied that the person is not adequately carrying out marriage counselling or dispute resolution services.

17. The Attorney General shall, by notice in the Gazette, publish the name of any person who has been registered as an approved marriage counsellor or family dispute resolution practitioner and any revocation of that registration shall also be published in the Gazette.

Name of approved counsellors and practitioners to be published

#### **PART 4 - RECONCILIATION, COUNSELLING AND FAMILY DISPUTE RESOLUTION**

18. In this Part, “appropriate officer” means a public officer employed by the court.

Interpretation for Part 4

Reconciliation

19. (1) Where proceedings for a dissolution of marriage have been instituted, or financial or custodial proceedings have been instituted by a spouse to a subsisting marriage, it is the duty of the judge or magistrate constituting the court to give consideration to the possibility of a reconciliation of the parties.

(2) If at any time during the proceedings it appears to the judge or magistrate from the evidence, or the attitude of the spouses, or either of them, that there is a reasonable possibility of a reconciliation, the judge or magistrate may adjourn the proceedings to afford the parties an opportunity of considering a reconciliation.

(3) Where a judge or magistrate adjourns proceedings in accordance with subsection (2) he may, if he thinks it desirable to do so, advise the parties to meet with an approved marriage counsellor or a person recommended by the spouses or either of them to assist them whom the court considers suitable, in considering a reconciliation.

(4) If, after an adjournment has been granted under subsection (2), either of the spouses requests that the hearing resume, the judge or magistrate shall resume the hearing as soon as practicable.

(5) Where the court makes an order or grants an injunction under section 47, in respect of the spouses, the court shall, if in its opinion it is in the interests of the parties or of the children of the marriage to do so, direct or advise either or both of the spouses to consult any of the persons specified in subsection (3).

Counselling and family  
dispute resolution

20. (1) Where a court is of the opinion that counselling may assist the spouses to improve their relationship with each other and with any child of the marriage, the court may direct the parties to consult an approved marriage counsellor and if it thinks it desirable to do so, adjourn the proceedings before it for the purpose.

(2) Where a court is of the opinion that family dispute resolution may assist the spouses to resolve any matter including financial and property matters which are the subject of the proceedings the court may direct the spouses to consult a family dispute resolution practitioner and if it thinks it desirable to do so, adjourn the proceedings before it for the purpose.

(3) If, after an adjournment under subsection (1) or (2) either of the spouses requests that the proceedings resume, the court shall resume the proceedings as soon as practicable.

21. (1) A direction by the court under section 20 may require the party or parties to encourage the participation of specified other persons who are likely to be affected by the proceedings including children, grandparents or other relatives.

Participation in conciliation etc. by persons other than parties, etc

(2) A failure to comply with any direction given under subsection (1) or section 20 does not constitute a contempt of court.

22. (1) In all matters in issue between spouses that are likely to become or are the subject of proceedings, every attorney-at-law representing a spouse in those proceedings shall give consideration to the possibility of a reconciliation of the spouses and every such attorney-at-law shall -

Duty of attorneys-at-law to promote reconciliation

- (a) ensure that the spouse for whom the attorney-at-law is acting is made aware of the facilities that exist for promoting a reconciliation; and
- (b) take such steps as, in the opinion of the attorney-at-law, may assist in promoting a reconciliation.

(2) An attorney-at-law who -

- (a) is acting for a spouse; and
- (b) applies to the court to have set down for hearing any matter in issue under this Law, or any other Law, or any other Law relating to the custody or guardianship of minors,

shall certify on the application that the attorney-at-law has carried out the responsibilities imposed by subsection (1).

23. The Clerk of the Court or other appropriate officer may advertise the existence and availability of the dispute resolution, counselling and welfare facilities of the court.

Power to advertise counselling and other facilities

24. (1) A spouse may file in the court a notice stating that he or she intends to seek the assistance of the family dispute resolution or counselling facilities of the court.

Notice seeking counselling, etc. facilities

(2) Where a notice is filed under subsection (1), the Clerk of the Court or other appropriate officer may arrange for the spouses to be interviewed by an approved marriage counsellor, a family dispute resolution practitioner or a social worker for the purpose of assisting the spouses with a view to reconciliation or the improvement of their relationship with each other and with the children of the marriage.

Certain documents to be provided

25. Rules may provide for the furnishing to a person proposing to institute proceedings under this Law, and in appropriate cases to the other spouse to the marriage, of documents setting out -

- (a) the legal and possible social effects of the proposed proceedings (including the consequences for the children of the marriage); and
- (b) the counselling, dispute resolution and other welfare facilities available within the court and elsewhere.

Confidentiality of communications in counselling

26. (1) An approved marriage counsellor shall not disclose a communication made to him or her while the counsellor is conducting counselling, unless the disclosure is required or authorised by this section.

(2) An approved marriage counsellor shall disclose a communication if the approved marriage counsellor reasonably believes the disclosure is necessary for the purpose of complying with any Law or if the approved marriage counsellor reasonably believes that it is necessary for the proper discharge of the functions of the approved marriage counsellor.

(3) An approved marriage counsellor may disclose a communication if consent to the disclosure is given by -

- (a) the person who made the communication if the person is eighteen years of age or older; or
- (b) each person who has parental responsibility for the child or a court, if the person who made the communication is a child under eighteen

(4) An approved marriage counsellor may disclose a communication if the approved marriage counsellor reasonably believes that the disclosure is necessary for the purpose of -

- (a) protecting a child from the risk of harm (whether physical or psychological);
- (b) preventing or lessening a serious and imminent threat to the life or health of a person;
- (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person;
- (d) preventing or lessening a serious and imminent threat to the property of a person; or
- (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property.



(5) Evidence that would be inadmissible because of section 27 is not admissible merely because this section requires or authorises its disclosure.

(6) In this section “communication” includes an admission.

27. (1) Evidence of anything said, or any admission made, by or in the company of -

Admissibility of communications in counselling and in referrals from other professionals

- (a) an approved marriage counsellor conducting family and marriage counselling; or
- (b) a professional to whom an approved marriage counsellor refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person,

is not admissible -

- (c) in any court; or
- (d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law or by the consent of the parties).

(2) Subsection (1) does not apply to -

- (a) an admission by an adult that indicates that a child has been abused or is at risk of abuse; or
- (b) a disclosure by a child that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

(3) An approved marriage counsellor who refers a person to a professional shall inform the professional of the effect of this section.

28. (1) A family dispute resolution practitioner shall not disclose a communication made to the practitioner while the practitioner is conducting family dispute resolution, unless the disclosure is required or authorised by this section.

Confidentiality of communications in family dispute resolution

(2) A family dispute resolution practitioner shall disclose a communication if the practitioner reasonably believes the disclosure is necessary for the purpose of complying with a law of the Islands or if he reasonably believes that it is necessary for the proper discharge of the functions of that person.

(3) A family dispute resolution practitioner may disclose a communication if the consent to the disclosure is given by -

- (a) the person who made the communication if he is eighteen years of age or over; or
- (b) if the person who made the communication is a child-
  - (i) each person who has parental responsibility for the child; or
  - (ii) a court.

(4) A family dispute resolution practitioner may disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of -

- (a) protecting a child from the risk of harm (whether physical or psychological);
- (b) preventing or lessening a serious and imminent threat to the life or health of a person;
- (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or
- (d) preventing or lessening a serious and imminent threat to the property of a person;
- (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property.

(5) Evidence that would be inadmissible because of section 29 is not admissible merely because this section requires or authorises its disclosure.

(6) In this section “communication” includes an admission.

Admissibility of communications in family dispute resolution and in referrals from other professionals

29. (1) Evidence of anything said, or any admission made, by or in the company of -

- (a) a family dispute resolution practitioner conducting family dispute resolution; or
- (b) a person (“the professional”) to whom a family dispute resolution practitioner refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person,

is not admissible -

- (c) in any court; or
- (d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Islands or by the consent of the parties).

- (2) Subsection (1) does not apply to -
- (a) an admission by an adult that indicates that a child has been abused or is at risk of abuse; or
  - (b) a disclosure by a child that indicates that the child has been abused or is at risk of abuse,

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

(3) A family dispute resolution practitioner who refers a person to a professional shall inform the professional of the effect of this section.

30. Subject to sections 26(2) and (4) and 28(2) and (4), any person who discloses to any other person anything said or any communication contrary to section 26 and 28 commits an offence and is liable on summary conviction to a fine of five thousand dollars.

An offence to disclose communication

31. A marriage counsellor and a family dispute resolution practitioner, before entering upon the performance of his functions, shall make, before a person authorised by law to take affidavits, an oath or affirmation of secrecy in accordance with the form prescribed in the Schedule.

Oath or affirmation of secrecy

## **PART 5 -NULLITY, DIVORCE AND OTHER MATRIMONIAL CAUSES**

32. (1) For the purpose of this section a marriage is void if -

Grounds for pronouncing decrees for nullity of marriage

- (a) it was celebrated in the Islands and -
  - (i) it is within the prohibited degrees of consanguinity or affinity; or
  - (ii) it is void under the law in force in the Islands relating to marriage;
- (b) it is bigamous; or
- (c) the parties were not virtually consenting thereto by reason of duress, fraud or incapacity of mind.

(2) For the purpose of this section, a person who is mentally challenged means a person who -

- (a) before reaching the age of eighteen years suffered from a condition of incomplete or arrested development of mind whether arising from inherent causes or induced by disease or injury;
- (b) by reason of mental disorder is unable to guard himself from common physical dangers;
- (c) by reason of mental disorder is incapable of managing his own affairs;

- (d) by reason of mental disorder requires care, supervision and control for his own protection and that of others; or
- (e) by reason of mental disorder is of vicious or criminal propensities and must be kept under control for the physical protection of others.

(3) Subject to subsection (4), a decree of nullity may be pronounced by the court in respect of any marriage or purported marriage on the ground that -

- (a) such marriage is void;
- (b) one of the spouses was, at the time of the marriage, physically incapable of consummating the marriage and remains so incapable;
- (c) the marriage has not been consummated by reason of the wilful refusal of the respondent to consummate the marriage;
- (d) that either spouse was, at the time of the marriage, of unsound mind, mentally challenged or subject to recurrent fits of insanity or epilepsy;
- (e) the respondent was at the time of the marriage suffering from a venereal disease in a communicable form; or
- (f) the respondent was at the time of marriage pregnant by some person other than the petitioner.

(4) A decree of nullity may be pronounced in the cases specified in subsection (3)(b) to (f) only if the petitioner was, at the time of the celebration of the marriage, ignorant of the facts alleged and the proceedings were instituted within one year from the date of the marriage; and in the cases specified in paragraphs (d) to (f), only if marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds of the decree.

(5) Where, apart from this Law, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside the Islands, nothing in this section shall -

- (a) preclude the determination of that matter in accordance with that law; or
- (b) require the application to the marriage of the grounds there mentioned except so far as applicable in accordance with those rules.

Dissolution of marriage

33. (1) A petition for a decree of dissolution of marriage may be presented to the court by either or both spouses on the ground that the marriage has broken down irretrievably.

(2) In proceedings for a decree of dissolution of marriage the ground shall be held to have been established, and such decree shall be made if the court is satisfied that the spouses have separated and thereafter lived separately and apart for a continuous period of not less than twelve months immediately preceding the date of filing of the petition for that decree and there is no reasonable likelihood of cohabitation being resumed.

34. (1) Spouses may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of only one of the spouses.

Meaning of separation

(2) Spouses may be held to have separated and have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either spouse has rendered some household services to the other.

35. (1) For the purposes of proceedings for a decree of dissolution of marriage, in calculating any period for which the spouses have been living separately and apart, and in considering whether such period has been continuous, no account shall be taken of any one period, not exceeding three months, during which the parties resumed cohabitation with a view to reconciliation.

Effect of resumption of cohabitation

(2) For the purpose of subsection (1), a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

36. (1) A decree of judicial separation may be pronounced by the court in respect of any marriage at any time after its celebration upon the ground that the parties to the marriage have separated in accordance with this Law.

Grounds for pronouncing judicial separation

(2) The court may, on the petition of either spouse and with the consent of the other spouse in respect of a marriage in which a decree of judicial separation has been pronounced, reverse such decree.

37. A petition for a decree of dissolution of marriage shall not be presented unless at the date of the presentation of the petition one year has passed since the date of the marriage.

Restrictions on petitions during the early years

38. (1) A spouse who alleges that reasonable grounds exist for supposing that the other spouse is dead may present a petition to the court to have presumed that the other spouse is dead and to have the marriage dissolved, and the court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and dissolution of the marriage.

Proceedings for decree of presumption of death and dissolution marriage

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that the other party is dead until the contrary is proved.

Court not to make decree of dissolution where application for nullity before it

39. Where both a petition for a decree of nullity of marriage and a petition for a decree of dissolution of that marriage are before the court, the court shall not make a decree of dissolution of the marriage unless it has dismissed the petition for a decree of nullity of the marriage.

Facts and circumstances occurring before commencement of this Law or outside of the Islands

40. A decree under this Part may be made or refused by the court on facts and circumstances, notwithstanding that those facts and circumstances, or some of them, occurred before the date of commencement of this Law or outside the Islands.

Duty of court

41. (1) In matrimonial proceedings, it is the duty of the court to satisfy itself

- (a) that there has been no collusion in relation to the petition for a decree and to dismiss the petition if it finds that there was collusion in presenting it; and
- (b) that reasonable arrangements have been made for the custody and support of any children of the marriage in accordance with this Law.

(2) In this section, “collusion” means an agreement or conspiracy to which a petitioner is either directly or indirectly a party for the purpose of subverting the administration of justice, and includes any agreement, understanding or arrangement to fabricate or suppress evidence or to deceive the court.

Agreements to facilitate divorce proceedings

42. Parties to a marriage for the purpose of facilitating proceedings under this Law shall make a full and frank disclosure of any maintenance or marriage agreement entered into by them and the negotiations leading thereto to the court.

Impediment to the grant of a decree

43. The court may refuse to grant a decree where -

- (a) there has been unjustifiable delay in the presentation of a petition;
- (b) section 50 applies; or
- (c) where the party seeking the decree has wilfully attempted to deceive the court in a matter or particular material to the case.

Effective date of dissolution of marriage generally

44. (1) Subject to this Law, a decree of dissolution of marriage, separation or nullity takes effect on the thirty-first day after the day on which the judgment

granting the decree is rendered or from the making of an order under section 50 whichever is later.

(2) If a decree has been granted in any proceedings, the court of first instance (whether or not it made the order), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this Law -

- (a) make an order extending the period at the expiration of which the decree will take effect, having regard to the possibility of an appeal or further appeal; or
- (b) make an order reducing the period at the expiration of which the decree will take effect if it is satisfied that there are special circumstances that justify its so doing.

(3) If an appeal is instituted (whether or not it is the first appeal) before a decree order has taken effect, then, notwithstanding any order in force under subsection (2) at the time of the institution of the appeal but subject to any such order made after the institution of the appeal, the decree, unless reversed or rescinded, takes effect under this section -

- (a) at the expiration of a period of thirty-one days after the day on which the appeal is determined or discontinued; or
- (b) on the day on which the decree would have taken effect under subsection (1) if no appeal had been instituted,

whichever is the later.

(4) A decree of separation or dissolution does not take effect by force of this section if either of the parties to the marriage has died.

(5) Where a dissolution of marriage takes effect in accordance with this section, the Clerk of the Court, shall, on request, issue to any person a certificate that a divorce granted under this Law dissolved the marriage of the specified persons effective as of a specified date.

(6) A certificate referred to in subsection (5), or a certified copy thereof, is conclusive proof of the facts so certified without proof of the signature or authority of the person appearing to have signed the certificate.

45. On taking effect, a decree of dissolution of marriage granted under this Law dissolves the marriage of the spouses and a former spouse may marry again. Marriage dissolved

46. (1) The effect of a decree of nullity in respect of a void marriage is declaratory that no marriage ever existed and the ceremony thereof was void ab initio. Effect of certain decrees

(2) The effect of a decree of nullity in respect of a marriage other than a void marriage is to annul the marriage with effect from the date of the decree.

(3) The effect of a decree of presumption of death or of dissolution of marriage is to dissolve the marriage with effect from the date of the decree.

(4) The effect of a decree of judicial separation is, while such separation subsists, that neither spouse may in any way interfere with the other and that the parties shall be deemed to be separated for the purpose of any future petition for dissolution of the said marriage.

#### **PART 6- INJUNCTIONS AND OTHER ORDERS**

Court may grant injunctions or make other orders in relation to protection of parties, children or property, etc.

47. (1) Without prejudice to any other powers of the court, the court may, upon application made by either spouse, whether or not an application has been made by either spouse for any other relief under this Law, grant an injunction or other order -

- (a) for the personal protection of a spouse or of any relevant child;
- (b) restraining a spouse from entering or remaining in the matrimonial home or the premises in which the other spouse resides, or restraining a spouse from entering or remaining in a specified area, being an area in which the matrimonial home is, or which is the location of the premises in which the other spouse to the marriage resides;
- (c) restraining a spouse from entering the place of work of the other spouse or restraining a spouse from entering the place of work or the place of education of any relevant child;
- (d) in relation to the property of a spouse; or
- (e) relating to the use or occupancy of the matrimonial home.

(2) In exercising its powers under subsection (1), the court shall act in accordance with the Protection From Domestic Violence Law, 2010 where necessary and may make an order relieving a party to a marriage from any obligation to perform household services or render conjugal rights.

(3) If the court is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with an injunction or other order under this section, then, without prejudice to the power of the court to punish that person for contempt, the court may -

- (a) order that person to pay a fine;
- (b) require that person to enter into a recognizance, with or without sureties, in such amount as the court considers reasonable, to ensure that such person will comply with the injunction or other



- order, or order that person to be imprisoned until the person enters into such recognizance or until the expiration of three months, whichever first occurs;
- (c) order that person to deliver up to the court such documents as the court thinks fit; or
- (d) make such other orders as the court considers necessary to enforce compliance with the injunction or other order.

**PART 7 - WELFARE AND PARENTAL RESPONSIBILITY OF CHILDREN IN MATRIMONIAL PROCEEDINGS**

48. In this Part -

Interpretation for Part 7

“marriage” includes a void marriage; and

“overseas custody order” means an order made by a court in a prescribed overseas country, being -

- (a) an order for custody of, or access to, a child who has not attained the age of eighteen years; or
- (b) an order varying or discharging an order as described in paragraph (a), including any such order made under this Law.

49. In the determination of any matter relating to the welfare of and parental responsibility for a child in proceedings under this Law the court may take into account any maintenance agreement entered into by the parties to the marriage but the court may disregard any provision of such agreement pertaining to such issues where, in the opinion of the court, to do so is in the best interests of the child.

Court may take into account maintenance agreement in matters relating to care etc. of child

50. (1) In any proceedings for a decree of dissolution or nullity of marriage, or a decree of judicial separation, the court shall consider -

Order relating to care and responsibility for child in matrimonial proceedings

- (a) whether there are any children of the marriage to whom this section applies; and
- (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their up bringing and welfare) it should exercise any of its powers under this Law and the Children Law (2012 Revision) with respect to any of them.

(2012 Revision)

(2) Where, in any case to which this section applies, it appears to the court that-

(2012 Revision)

- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under this Law and the Children Law (2012 Revision) with respect to any child of the marriage;
- (b) it is not in a position to exercise that power or those powers without giving further consideration to the case; and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

it may direct that the decree of dissolution, nullity or judicial separation shall not be granted until the court orders otherwise.

(3) This section applies to -

- (a) any child of the marriage who has not reached the age of eighteen years at the date when the court considers the case in accordance with the requirements of this section; and
- (b) any child of the marriage who has reached that age at that date and in relation to whom the court directs that this section should apply.

Court may order conference with family dispute resolution practitioner, probation officer or social worker

51. (1) Where in any proceedings under this Law the welfare of a child is relevant, the court may, at any stage of the proceedings, of its own motion or upon the request of a spouse make an order directing the parties to attend a conference with a family dispute resolution practitioner, social worker or probation officer, as the circumstances require, to discuss the welfare of the child, and, if there are any differences between the spouses as to matters affecting the welfare of the child, to endeavour to resolve those differences.

(2) The court may, in any order made under subsection (1), fix a place and time for the conference to take place, or direct that the conference shall take place at a place and time to be fixed by the family dispute resolution practitioner, social worker or the probation officer.

(3) The family dispute resolution practitioner, social worker or probation officer shall report to the court any failure by a spouse to attend a conference in accordance with an order made under subsection (1).

(4) In any proceedings referred to in subsection (1), the court may obtain from a family dispute resolution practitioner, social worker or a probation officer a report on such matters relevant to the proceedings as the court considers desirable, and may -

- (a) receive the report in evidence; and
- (b) if it thinks necessary, adjourn the proceedings for the purpose of obtaining such a report.

(5) Evidence of anything said or of any admission made at a conference that takes place in accordance with an order made under subsection (1) is, subject to subsection (4), not admissible in any court.

52. (1) In proceedings in respect of the care and parental responsibility for a child of a marriage, the court shall make such order as it considers fit in accordance with the Children Law, (2012 Revision) and the court may, if it is satisfied that it is desirable to do so, make an order placing the child in the care of a person other than a spouse.

Power of court in proceedings relating to responsibility for child  
(2012 Revision)

(2) Where the court makes an order under this Part in respect of a child, the court may also, if it thinks the welfare of the child so requires, include in the order that compliance with the provisions of the order shall, as far as practicable, be supervised by a social worker or the probation officer, as the circumstances require.

(3) The court may, in accordance with the Children Law (2012 Revision) discharge or vary an order under this section, or may suspend any part of the order, and may revive the operation of any part so suspended.

(2012 Revision)

(4) On an application for the discharge or variation of an order under this section in respect of a child who has attained the age of sixteen years, the court shall discharge or vary the order if it is satisfied that the discharge or variation of the order would be in accordance with the wishes of the child; but the court may refuse the application if it is satisfied that it is undesirable to discharge or vary the order by reason of special circumstances.

53. Where in proceedings the parental responsibility, guardianship or maintenance of, or access to, a child of a marriage is being considered by the court if it appears to the court that the child ought to be separately represented, the court may, of its own motion, or on the application of the child, of a social worker, guardian ad litem or of a probation officer or of any other person, order that the child be separately represented; and the court may make such other orders as it thinks necessary for the purpose of securing separate representation.

Separate representation of child

54. The court may proceed with the hearing of proceedings in relation to a child notwithstanding that the person by whom the proceedings were instituted has failed to comply with an order of the court or of another court of competent jurisdiction.

Where applicant in contempt

Interfering with child  
subject to order

55. (1) Where an order is made under this Law granting to a person named in the order the parental responsibility for a child of the marriage, no person shall remove the child from the care and control of the person so named, contrary to the order, or interfere with the exercise of that person's rights under the order in respect of the child.

(2) Where an order is made under this Law granting to a person the parental responsibility for a child of the marriage being a child that is in the care and control of another person, that other person shall, upon demand by the person entitled to parental responsibility for the child under the order, deliver the child to that person.

(3) Where an order under this Law provides for a person to have access to a child of the marriage no person shall, without just cause or excuse, hinder or prevent the person entitled to access under the order from obtaining access to the child in accordance with the order, or interfere with the access to the child that that person is entitled to in accordance with the order.

(4) Where the court is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with a provision of this section, it may -

- (a) order that person to pay a fine of five thousand dollars;
- (b) require that person to enter into a recognizance with or without sureties, in such reasonable amount as the court thinks fit, that that person will comply with the relevant order, or order that person to be imprisoned until that person enters into such a recognizance or until the expiration of three months, whichever first occurs;
- (c) order that person to deliver up to the court that person's passport and such other documents as the court thinks fit; and
- (d) make such other orders as the court considers necessary to enforce compliance with this section.

(5) Where an act or omission referred to in subsection (4) is an offence against any other law, the person committing the offence may be prosecuted and convicted under that law, but nothing in this section shall render any person liable to be punished twice in respect of the same offence.

(6) Nothing in subsection (5) shall prejudice the power of the court to punish a person for contempt of court.

**PART 8- MAINTENANCE AND OTHER FINANCIAL PROVISIONS**

56. In this Part, “spouse” includes a former spouse. Interpretation for this Part
57. (1) Subject to subsection (2) and section 50, a decree for the dissolution of marriage or separation shall not be granted by the court, unless it is satisfied that - When decree is to be granted
- (a) financial provision for the spouse applying for such provision has been resolved or no financial provision is required for either spouse; or
  - (b) the financial provision for the spouse applying for such provision is reasonable and fair or the best that can be made in the circumstances.
- (2) Where there are no children of the marriage and upon the application of the spouse who is required to make financial provision for the other spouse, the court may, if it thinks fit, proceed with the grant of a decree without observing the requirements of subsection (1) if -
- (a) it appears that there are circumstances making it desirable that the decree should be granted without delay; and
  - (b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.
- (3) For the purposes of this section “financial provision” means any payment of monies or right to property ordered by the court in favour of a spouse under this Part.
58. (1) A court may make such order as it thinks just for the maintenance of any child of the marriage or for the maintenance of a spouse - Powers of court in maintenance proceedings and to make orders pending suit
- (a) in any proceeding under section 47 or in any proceedings for the dissolution or nullity of marriage, for judicial separation before, by or after the final decree; or
  - (b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.
- (2) The court may make such orders as it thinks fit for the provision of maintenance of a spouse in accordance with the Maintenance Law, 2018 and in relation to the maintenance of a child in accordance with the Children Law (2012 Revision). (2012 Revision)
- (3) The liability of a spouse under subsection (1) to maintain the other spouse arises only where the other spouse is unable to support herself or himself

adequately, whether by reason of having the care or control of a child of the marriage who has not attained the age of eighteen years, or by reason of age or physical or mental incapacity for appropriate gainful employment, or for any other adequate reason, having regard to any relevant matter set out in the Maintenance Law, 2018.

Urgent maintenance cases

59. Where, in proceedings in respect of the maintenance of a spouse or of a child of a marriage it appears to the court that the spouse or the child is in immediate need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums and for such period as the court considers reasonable.

Entitlement to matrimonial home

60. (1) Subject to the provisions of Part 2 of the Family Property (Rights of Spouses) Law, 2018 and the power given by the court under that Law to vary such entitlement, each spouse shall be entitled to one-half share of the matrimonial home -

- (a) on the grant of a decree of dissolution of a marriage or the termination of cohabitation;
- (b) on the grant of a decree of nullity of marriage; and
- (c) on the grant of a decree of judicial separation.

(2) The Family Property (Rights of Spouses) Law, 2018 shall apply to a matrimonial home as if the words “family home” were substituted by the words “matrimonial home”.

Order relating to use of matrimonial home pending final decree

61. The court may, pursuant to its powers under the Family Property (Rights of Spouses) Law, 2018, make an order, pending the outcome of any matrimonial proceedings in respect of which an application has been made to the court, providing for the use of the matrimonial home for any period specified by the court by both or either spouse.

Orders relating to division of matrimonial home and other property

62. (1) Subject to subsection (2), in proceedings under this Law, a spouse shall be entitled to apply to the court not later than twelve months after a decree of dissolution of marriage, nullity of marriage or judicial separation is granted, for -

- (a) an order for the division of the matrimonial home;
- (b) a declaration of title or rights to property (other than the matrimonial home); or
- (c) an order altering the interests of the spouses in the property, including-
  - (i) an order for a settlement of property in substitution for any interest in the property; and

- (ii) an order requiring either or both of the spouses to make, for the benefit of either or both of the spouses or a child of the marriage such settlement or transfer of property as the court determines.

(2) The court shall make an order under subsection (1) in accordance with the provisions of the Family Property (Rights of Spouses) Law, 2018 and shall not make an order unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

63. (1) Where a court is satisfied on an application by a person affected by an order made under section 62(1)(c) that the order was obtained by fraud, duress, the giving of false evidence or by the suppression of evidence, the court may, in its discretion, set aside the order, and, if it thinks fit, but subject to section 62(2), make another order under section 62 in substitution for the order so set aside.

Power to set aside orders altering property interest

(2) In exercising its powers under this section, the court shall have regard to the interest of, and shall make an appropriate order for the protection of, a purchaser in good faith or other interested person.

64. (1) Subject to this section, spouses or persons in contemplation of marriage may enter into a maintenance or marriage agreement which may provide that the agreement shall operate, in relation to the maintenance and other financial matters dealt with in the agreement, in substitution for the rights (if any) of the parties to the agreement under this Part.

Maintenance and marriage agreements, etc. entered into in substitution for rights under Law

(2) A maintenance agreement shall comply with the provisions of the Maintenance Law, 2018 and may be registered with the court under that Law in the manner prescribed by that Law.

(3) A marriage agreement shall comply with the provisions of the Family Property (Rights of Spouses) Law, 2018.

(4) If a maintenance or marriage agreement which makes provision as mentioned is enforceable in accordance with the law, any order having effect under this Part, or any order made under the former Law and continued in force by virtue of this Law, ceases to have effect in so far as it relates to the financial matters dealt with in the agreement, and, subject to subsection (6), no court having jurisdiction under this Law may make an order in respect of those financial matters.

(5) Where the court is satisfied that the arrangements in a maintenance agreement that is approved in relation to a child of the marriage are no longer adequate in the circumstances, it may make an order under this Part.

(6) Except as otherwise provided by this Law and the rules, this section does not apply to overseas maintenance or overseas marriage agreements.

Registration of  
maintenance and  
marriage agreements

65. (1) Except an agreement to which section 71 applies, a marriage agreement may be registered in the manner prescribed under this Law.

(2) Where a maintenance or marriage agreement is so registered, the court may, in relation to the agreement, exercise any of the powers conferred on it by section 71 as if the agreement were an order of the court.

(3) The court may set aside any maintenance or marriage agreement that is registered pursuant to this section where it is satisfied that the concurrence of a party to the agreement was obtained by fraud or undue influence, or that the parties desire the agreement to be set aside.

(4) Subject to section 73 this section does not apply to overseas maintenance or overseas marriage agreements.

Enforcement of  
maintenance agreements  
etc.

66. A maintenance agreement or marriage agreement that is registered, or is deemed to be registered in the court may be enforced as if it were an order of the court.

General powers of court

67. A court, in exercising its powers under this Part, may, in accordance with the Family Property (Rights of Spouses) Law, 2018 and the Maintenance Law, 2018, do any or all of the following -

- (a) order payment of a lump sum, whether in one amount or by installments;
- (b) order payment of a weekly, monthly, yearly or other periodic sum;
- (c) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
- (d) order that any necessary deed or instrument be executed, and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (e) on or at any time after making an order for maintenance, order the person by whom maintenance is payable under the order, or the legal personal representative of that person, as the case may be, to give such security as it specifies for the payment of any sum that is to be paid under the order; and for that purpose may direct the Clerk of the Court to settle and approve a proper deed or instrument, to be executed by all the necessary parties;
- (f) appoint or remove trustees;



- (g) order that payments be made directly to a spouse, to a trustee to be appointed, into court or an account standing in the name of the spouse at a Class A bank or to such public authority as the court specifies in the order, for the benefit of a spouse;
- (h) order that payment of maintenance in respect of a child be made to such person, trustee or public authority as the court specifies;
- (i) make an order providing for the delivering up, safekeeping and preservation of the matrimonial home and its contents;
- (j) make an order directing that one spouse be given exclusive possession of the matrimonial home or part of it for the period that the court directs and release other property that is a matrimonial home from the application of this Part;
- (k) make an order directing a spouse to whom exclusive possession of the matrimonial home is given to make periodic payments to the other spouse;
- (l) make an order directing that the contents of the matrimonial home, or any part of them -
  - (i) remain in the home for the use of the spouse given possession; or
  - (ii) be removed from the home for the use of a spouse or child;
- (m) order a spouse to pay for all or part of the repair and maintenance of the matrimonial home and of other liabilities arising in respect of it, or to make periodic payments to the other spouse for those purposes;
- (n) authorising the disposition or encumbrance of a spouse's interest in the matrimonial home, subject to the other spouse's right of exclusive possession as ordered;
- (o) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for life or during joint lives or until further order;
- (p) impose terms and conditions;
- (q) make an order by consent;
- (r) make any other like or dissimilar order as those mentioned in paragraphs (a) to (q) that the court thinks it necessary to make to do justice; and
- (s) subject to this Law, make an order under this Part at any time before or after the making of a decree under another Part.

68. (1) In proceedings under this Part, other than proceedings under section 62(1)(c) or proceedings in respect of maintenance payable during the subsistence of a marriage, the court shall, as far as practicable, make such orders as will finally determine the financial relationships between the spouses and avoid further proceedings between them.

Duty of court to end financial relations

(2) Where the court decides to make a periodical payments or secured periodical payments order in favour of a spouse, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would, in the opinion of the court, be sufficient to enable the spouse in whose favour the order is made, to adjust without undue hardship to the termination of the spouse's dependence on the other party.

(3) Where on or after the grant of a decree of dissolution of marriage or nullity of marriage an application is made by a spouse for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either spouse to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under section 67(b).

Variation, cessation etc.  
of maintenance order in  
respect of a child  
  
(2012 Revision)

69. The Children Law (2012 Revision) applies to the variation, suspension, cessation and revival of a maintenance order made by the court in respect of a child of a marriage.

Variation, cessation, etc.  
of maintenance order in  
respect of a spouse

70. The Maintenance Law, 2018 applies to the variation, suspension, cessation and revival of a maintenance order made by the court in respect of a spouse.

Execution of instruments  
by order of court

71. (1) Where -

- (a) an order under this Part has directed a person to execute a deed or instrument; and
- (b) that person has refused or neglected to comply with the direction or, for any other reason, the court thinks it necessary to exercise the powers of the court under this subsection,

the court may direct the Clerk of the Court or such other person as the court thinks fit to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person directed by the order to execute it.

(3) The court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

72. (1) The court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a spouse, which is made or proposed to be made to defeat an existing or anticipated order in any proceedings under this Part for costs, maintenance or the declaration or alteration of any interest in property or which, irrespective of intention, is likely to defeat any such order.

Transactions to defeat claims

(2) The court may order that any money or real or personal property dealt with by any such instrument or disposition may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs, or that the proceeds of a sale shall be paid into court pending an order of the court.

(3) The court shall have regard to the interests of, and shall make an appropriate order for the protection of, a purchaser in good faith or other interested person.

(4) The court may order a party or a person acting in collusion with a party to pay the costs of any other party, or of a purchaser in good faith or other person interested, of and incidental to the instrument or disposition and the setting aside or restraining of the instrument or disposition.

(5) In this section, “disposition” includes a sale and a gift.

73. Rules of Court may make provision in respect of -

Rules in relation to overseas maintenance and marriage agreements

- (a) the application of sections 64 and 65, with such additions, exceptions and modifications as may be prescribed, to overseas maintenance and marriage agreements;
- (b) the transmission to appropriate courts or authorities of prescribed overseas countries of, or copies of, maintenance or marriage agreements for the purpose of securing the enforcement of those agreements in those countries; and
- (c) the institution and prosecution of maintenance proceedings by an authorised authority or person with respect to the maintenance of a spouse or of a child of a marriage on behalf of that spouse or child.

#### **PART 9- FINANCIAL RELIEF IN THE ISLANDS AFTER OVERSEAS DIVORCE ETC.**

74. (1) Where -

Applications for financial relief after overseas divorce etc.

- (a) a marriage has been dissolved or annulled, or spouses have been legally separated, by means of judicial or other proceedings in an overseas country; and

- (b) the divorce, annulment or legal separation is entitled to be recognised as valid in the Islands,

either spouse may apply to the court in the manner prescribed by the rules for an order for financial relief under this Law.

(2) If after a marriage has been dissolved or annulled in an overseas country one of the spouses remarries, that spouse shall not be entitled to make an application for financial relief in relation to that dissolved or annulled marriage.

(3) For the avoidance of doubt it is hereby declared that the reference in subsection (2) to remarriage includes a reference to a marriage which is by this Law void or voidable.

Leave of the court  
required for applications  
for financial relief

75. (1) An application for an order for financial relief shall not be made under this Part unless the leave of the court has been obtained in accordance with rules; and the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.

(2) The court may grant leave under this section notwithstanding that an order has been made by a court in a country outside the Islands requiring the other spouse to make any payment or transfer any property to the applicant or a child of the marriage.

(3) Leave under this section may be granted subject to such conditions as the court thinks fit.

Interim orders for  
maintenance

76. (1) Where leave is granted under section 75 for the making of an application for an order for financial relief and it appears to the court that the applicant or any child of the marriage is in immediate need of financial assistance, the court may make an interim order for maintenance requiring the other spouse to make to the applicant or to the child such periodical payments.

(2) An order under subsection (1) shall be for such term beginning not earlier than the date of the grant of leave and ending with the date of the determination of the application for an order for financial relief, as the court thinks reasonable.

(3) If it appears to the court that the court has jurisdiction to entertain the application for an order for financial relief by reason only of section 77(c) the court shall not make an interim order under this section.

(4) An interim order under subsection (1) may be made subject to such conditions as the court thinks fit.

77. The court has jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied - Jurisdiction of the court

- (a) either of the spouses was domiciled in the Islands on the date of the application for leave under section 75 or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country;
- (b) either of the spouses was ordinarily resident in the Islands throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
- (c) either or both of the spouses had at the date of the application for leave a beneficial interest in a dwelling-house situated in the Islands which was at some time during the marriage a matrimonial home of the spouses.

78. (1) The court, before making an order for financial relief, shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in the Islands; and if the court is not satisfied that it would be appropriate, the court shall dismiss the application. Duty of the court to consider whether the Islands is appropriate venue for application

(2) The court shall in particular have regard to the following matters-

- (a) the connection which the spouses have with the Islands;
- (b) the connection which those spouses have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
- (c) the connection which those spouses have with any other country outside the Islands;
- (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside the Islands;
- (e) in a case where an order has been made by a court in a country outside the Islands requiring the other spouse to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
- (f) any right which the applicant has, or has had, to apply for financial relief from the other spouse under the law of any

country outside the Islands and, if the applicant has omitted to exercise that right, the reason for that omission;

- (g) the availability in the Islands of any property in respect of which an order under this Part in favour of the applicant could be made;
- (h) the extent to which any order made under this Part is likely to be enforceable; and
- (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

Orders for financial provision and property adjustment

79. Subject to section 82, an application by a spouse for an order for financial relief under this Part, the court may make any one or more of the orders specified in section 58 or 62(1)(b) and (c) which it could make under this Law if a decree of divorce, nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in the Islands.

Matters to which the court is to have regard in exercising its powers under section 79

80. (1) In deciding whether to exercise its powers under section 79 and, if so, in what manner, the court shall act in accordance with this section.

(2) The court shall have regard to all the circumstances of the case, first consideration being given to the welfare of any child of the marriage who has not attained the age of eighteen.

(3) As regards the exercise of those powers in relation to the maintenance of a spouse, the court shall in particular have regard to the matters mentioned in section 12(5) of the Maintenance Law, 2018.

(4) Where an order has been made by a court outside the Islands for the making of payments or the transfer of property by a spouse, the court in considering in accordance with this section the financial resources of the other spouse or a child of the marriage shall have regard to the extent to which that order has been complied with or is likely to be complied with.

Consent orders for financial provision or property adjustment

81. (1) Notwithstanding anything in section 80, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

(2) Subsection (1) applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.

(3) In this section -

“consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees; and

“prescribed” means prescribed by Rules of Court.

82. (1) Where the court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in the Islands of a dwelling-house which was a matrimonial home of the spouses, the court may make under section 79 any one or more of the following orders, but no other -

Restriction of powers of court where jurisdiction depends on matrimonial home in the Islands

- (a) an order that either spouse shall pay to the other such lump sum as may be specified in the order;
- (b) an order that a spouse shall pay to such person as may be so specified for the benefit of a child of the marriage, or to such a child, such lump sum as may be so specified;
- (c) an order that a spouse shall transfer to the other spouse, to any child of the marriage or to such person as may be so specified for the benefit of such a child, the interest of the first-mentioned spouse in the dwelling-house, or such part of that interest as may be so specified;
- (d) an order that a settlement of the interest of a spouse in the dwelling-house, or such part of that interest as may be so specified, be made to the satisfaction of the court for the benefit of the other spouse and of the children of the marriage or either or any of them;
- (e) an order varying for the benefit of the spouse and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the spouses so far as that settlement relates to an interest in the dwelling-house;
- (f) an order extinguishing or reducing the interest of either of the spouses under any such settlement so far as that interest is an interest in the dwelling-house; and
- (g) an order for the sale of the interest of a spouse in the dwelling-house.

(2) Where, in the circumstances mentioned in subsection (1), the court makes an order for the payment of a lump sum by a spouse, the amount of the lump sum shall not exceed, or where more than one such order is made the total amount of the lump sums shall not exceed in aggregate, the following amount -

- (a) if the interest of that spouse in the dwelling-house is sold in pursuance of an order made under subsection (1)(g), the amount of the proceeds of the sale of that interest after deducting therefrom any costs incurred in the sale thereof; or

- (b) if the interest of that spouse is not so sold, the amount which in the opinion of the court represents the value of that interest.

(3) Where the interest of a spouse in the dwelling-house is held jointly or in common with any other person or persons-

- (a) the reference in subsection (1)(g) to the interest of a spouse shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and
- (b) the reference in subsection (2)(a) to the amount of the proceeds of a sale ordered under subsection (1)(g) shall be construed as a reference to that part of those proceeds which is attributable to the interest of that spouse in the dwelling-house.

Transactions to defeat claims under this Part

83. Section 72 applies for the purposes of this Part.

Interpretation for this Part

84. In this Part -

- (a) “dwelling-house” includes any building or part of building which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to the dwelling-house and occupied therewith;
- (b) “order for financial relief” means an order under sections 58 or 62(b) or (c); and
- (c) “spouse” includes former spouse.

#### **PART 10- MATRIMONIAL PROPERTY AND CREDITORS**

Provisions relating to creditors, etc.

85. The provisions of sections 17 and 18 of the Family Property (Rights of Spouses) Law, 2018 relating to -

- (a) the protection of creditors of the family home and other property of spouses; and
- (b) persons other than spouses having any security, charge or encumbrance in relation to such home or other property,

apply for the purposes of any dealing with, an order or proceedings under this Law relating to matrimonial property and the matrimonial home.

#### **PART 11- APPEALS**

Notice of appeal

86. (1) Either spouse to matrimonial proceedings brought under this Law may appeal, in the case of a matter heard by the summary court, to the Grand Court, and otherwise to the Court of Appeal, against any decree or order pronounced or made by the court in such proceedings in respect of any matter of law or of mixed fact and law.



(2) Written notice of an appeal under subsection (1) shall be lodged within fourteen days of the pronouncement of the decree or order or such notice shall be given orally in open court at the time of the pronouncement of the decree or order.

87. The Grand Court or Court of Appeal may, after hearing and considering any appeal against any decree or order pronounced under this Law -

Powers of court on appeal

- (a) rescind the decree or order; or
- (b) confirm the decree or order with or without variation of any order made therein.

#### **PART 12- PROCEDURE AND EVIDENCE**

88. (1) Subject to this section and the rules, all proceedings in a court shall be heard in closed court.

Procedure

(2) Subject to the rules, in any proceedings under this Law the court may, of its own motion or on the application of a party to the proceedings, make one or more of the following orders -

- (a) an order that a specified person is not, or specified persons are not, to be present in court during the proceedings or during a specified part of the proceedings;
- (b) an order that persons included in a specified class of persons are not to be present in court during the proceedings or during a specified part of the proceedings; or
- (c) an order that only the parties to the proceedings, their legal representatives and such other persons, if any, as are specified by the court may be present in court during the proceedings or during a specified part of the proceedings.

(3) In proceedings under this Law, the court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

89. (1) The court may, if it thinks fit, order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of any petition.

Examination of petitioner

(2) The court may from time to time adjourn the hearing of a petition and may require further evidence thereon if it thinks fit.

90. Subject to section 91, rules may provide for evidence of any material matter to be given on affidavit at the hearing of -

Evidence by affidavit

- (a) proceedings for principal relief that are undefended at the time of the hearing; and
- (b) proceedings other than proceedings for principal relief.

Children swearing affidavits, being called as witnesses or being present in court

91. (1) A child, other than a child who is or is seeking to become a party to proceedings, shall not swear an affidavit for the purposes of proceedings under this Law, unless the court makes an order allowing the child to do so.

(2) A child shall not be called as a witness in, or be present during, proceedings in any court when exercising jurisdiction under this Law, unless the court makes an order allowing the child to be called as a witness or to be present.

Evidence as to paternity

92. (1) Where the paternity of a child is a question in issue in proceedings under this Law, the court may make an order requiring either party or any other person to give such DNA evidence as is material to the question.

(2) The court, in addition to deciding, after receiving evidence, the issue of the parentage of a child for the purposes of proceedings, may also issue a declaration of parentage that is conclusive evidence of parentage for the purposes of all laws of the Islands.

Offensive or scandalous questions

93. (1) The court shall forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting or humiliating, unless the court is satisfied that it is essential in the interest of justice that the question be answered.

(2) The court shall forbid an examination of a witness that it regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless the court is satisfied that it is essential in the interests of justice for the examination to continue or for the questions to be answered.

Proof of birth, marriage or death

94. In proceedings under this Law, the court may receive as evidence of the facts the matters stated in a document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, marriage or death alleged to have taken place, whether in the Islands or elsewhere.

### **PART 13- RECOGNITION OF DECREES**

Overseas decrees

95. (1) In this Part -

“applicant”, in relation to the dissolution or annulment of a marriage, means the party at whose instance the dissolution or annulment was effected;

“marriage” includes a purported marriage that is void;

“relevant date”, in relation to a dissolution or annulment of a marriage, means the date of the institution of the proceedings that resulted in the dissolution or annulment; and

“respondent”, in relation to the dissolution or annulment of a marriage, means a party to the marriage not being the party at whose instance the dissolution or annulment was effected.

(2) For the purposes of this Part, a person who is a national of a country of which an overseas country forms part shall be deemed to be a national of that overseas country.

(3) For the purposes of this Part, a dissolution or annulment of a marriage shall be deemed to have been effected in accordance with the law of an overseas country if it was effected in another overseas country in circumstances in which, at the relevant date, it would have been recognized as valid by the law of the first mentioned overseas country.

96. A dissolution or annulment of a marriage effected in accordance with the law of an overseas country shall be recognised as valid in the Islands where - Recognition

- (a) the respondent was ordinarily resident in the overseas country at the relevant date;
- (b) the applicant was ordinarily resident in the overseas country at the relevant date and either -
  - (i) the ordinary residence of the applicant had continued for not less than one year immediately before the relevant date; or
  - (ii) the last place of cohabitation of the spouses was in that country;
- (c) the applicant or the respondent was domiciled in the overseas country at the relevant date;
- (d) the respondent was a national of the overseas country at the relevant date;
- (e) the applicant was a national of the overseas country at the relevant date and either -
  - (i) the applicant was ordinarily resident in that country at that date; or
  - (ii) the applicant had been ordinarily resident in that country for a continuous period of one year falling at least in part, within the two years immediately before the relevant date; or

- (f) the applicant was a national of, and present in, the overseas country at the relevant date and the last place of cohabitation of the spouses was in an overseas country the law of which, at the relevant date, did not provide for dissolution of marriage or annulment of marriage.

Non-recognition 97. A dissolution or annulment of a marriage shall not be recognised as valid under section 96 where -

- (a) under the common law rules of private international law, recognition of its validity would be refused on the ground that a spouse had been denied natural justice or that the dissolution or annulment was obtained by fraud; or  
(b) recognition would manifestly be contrary to public policy.

Common law rules of recognition 98. Any dissolution or annulment of a marriage that would be recognised as valid under the common law rules of private international law but to which none of the provisions of this Part applies shall be recognised as valid in the Islands, and the operation of this section shall not be limited by any implication from those provisions.

Power to treat facts as proved 99. In considering the validity of a dissolution or annulment effected under the law of an overseas country, the court may treat as proved any facts found by a court of the overseas country or otherwise established for the purposes of the law of the overseas country.

Capacity to re-marry not affected 100. Where a dissolution or annulment of a marriage is to be recognised as valid in accordance with this Part, the capacity of a party to that marriage to re-marry in accordance with the law of the Islands is not affected by the fact that the validity of the dissolution or annulment is not recognised under the law of some other country.

Application of this Part 101. This Part applies in relation to dissolutions and annulments effected whether by decree, legislation or otherwise, whether before or after the date of commencement of this Law, and, for the purposes of this Part, any decree, legislation or other process by which it is established that a purported marriage was, or is to become void shall be deemed to be an annulment of the marriage.

#### **PART 14 - MISCELLANEOUS**

No action for damages for adultery 102. (1) After the date of the commencement of this Law no action lies for damages for adultery.

(2) Any proceedings for damages for adultery instituted before the date of the commencement of this Law shall not be continued after that date.

103. (1) Subject to this Part and to rules, all decrees made under this Law may be enforced by any court having jurisdiction under this Law. Enforcement generally

(2) Except as prescribed, a court shall not entertain any proceedings under this Law for the enforcement of a decree made by another court unless the decree is registered in the first-mentioned court in accordance with the rules.

(3) Where a person bound by a decree made under this Law has died, the decree may, with the leave of the court by which it was made and on such terms and conditions as the court thinks fit, be enforced against the estate of that person in respect of liabilities that arose under the decree before that person's death.

104. Rules may make provision for and in relation to the enforcement of decrees made under this Law, including provision in respect of - Methods of enforcement

- (a) the attachment of earnings for the purpose of ensuring payment under an order of the court;
- (b) the persons or public authorities that may apply to the court for an order for the attachment of earnings of the person by whom payment is required to be made;
- (c) the enforcement of arrears of maintenance; and
- (d) the practice and procedure to be followed for the purpose of attachment of earnings under this Law.

105. An employer may -

Deduction from salary or wages

- (a) with the consent in writing of a worker, make deductions from any salary or wages payable to the employee for the payment of maintenance in respect of an order made under this Law; or
- (b) on the written request of a worker, agree to make deductions for the purpose described in paragraph (a).

106. (1) Each party to proceedings under this Law shall, subject to subsection (2), bear his or her own costs. Costs

(2) Where the Court is of the opinion that the circumstances in any case are such as to justify it in so doing, it may, subject to rules make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as it thinks fit.

107. At any stage of the proceedings, the court may, if it is satisfied that the proceedings are frivolous or vexatious, dismiss the proceedings and make such order as to costs as it thinks fit. Frivolous or vexation proceedings

Repeal of the  
Matrimonial Causes  
Law (2005 Revision)

108. The Matrimonial Causes Law (2005 Revision) is repealed.

Rules and regulations

109. (1) The Cabinet, after consultation with the Chief Justice, may make regulations consistent with this Law prescribing anything which by this Law is to be or may be prescribed other than by rules and generally for the better carrying out of its purposes and provisions.

(2005 Revision)  
(2008 Revision)

(2) Until regulations and rules are made under this Law to provide for a matter that may be prescribed, the rules made under the Matrimonial Causes Law (2005 Revision) and rules that are in force immediately before the commencement of this Law or the repeal of that Law shall have effect as far as they are compatible with this Law and until expressly repealed by this Law or by rules made under this Law or the Grand Court Law (2008 Revision).

Transitional provisions

110. Subject to section 102, any matrimonial or other proceedings commenced but not concluded before the date of the commencement of this Law shall be continued and completed after such date in accordance with this Law.

Section 31

## SCHEDULE

### Oath or Affirmation of Secrecy

**I, ..... do swear (or solemnly, sincerely and truly declare and affirm) that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the parties to a marriage (or a party to a marriage) for the reconciliation of their marriage/ resolution of their disputes before the courts; and I do further swear that I will not, except with lawful authority, directly or indirectly disclose to any other person anything said or any admission made at a conference with me in my capacity as a marriage counsellor/ family dispute resolution practitioner, and that in all things I will be a true and faithful marriage counsellor/ family dispute resolution practitioner.**

Passed by the Legislative Assembly this    day of            , 2018

Speaker

Clerk of the Legislative Assembly

DRAFT