



Tonga

LEGITIMACY ACT

1988 Revised Edition



LEGITIMACY ACT

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LEGITIMACY ACT

Acts Nos. 18 of 1930, 12 of 1978, 46 of 1988

AN ACT RELATNG TO LEGITIMACY AND TO PROVIDE FOR LEGITIMATION BY SUBSEQUENT MARRIAGE

Commencement [1st August, 1930]

1 Short title.

This Act may be cited as The Legitimacy Act.

2 Interpretation.

In this Act unless the context otherwise requires—

“**legitimated person**” means a person legitimated by this Act;

“**date of legitimation**” means the date of the marriage leading to such legitimation or where the marriage occurred before the commencement of this Act, the commencement of this Act;

“**Court**” means the Supreme Court.

3 Legitimation by subsequent marriage of parents.

- (1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the

illegitimate person was or is at the date of the marriage domiciled in Tonga, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens.

- (2) Nothing in this Act contained shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born.
- (3) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Act expressly provided.
- (4) The provisions contained in the Schedule to this Act shall have effect with respect to the re-registration of the births of legitimated persons.

4 Rights of legitimated persons, etc., to take interests in property.

- (1) Subject to the provisions of this Act, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest—
 - (a) in the chattels of an intestate dying after the date of legitimation,
 - (b) under any will of chattels coming into operation after the date of legitimation, if and so far as a contrary intention is not expressed in the will,
 - (c) by descent under any law relating to succession to a tofi'a or a tax or town allotment, the holder thereof dying after the date of legitimation,

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

(Amended by Act 12 of 1978.)

Ranking of legitimated children *inter se* and in relation to legitimate children.

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

5 Succession on intestacy of legitimated persons and their issue.

Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his personal property, the same persons

shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

6 Application to illegitimate person dying before marriage of parents.

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

7 Personal rights and obligations of legitimated persons.

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

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

- (1) Where, after the commencement of this Act, the mother of an illegitimate child, such child not being a legitimated person, dies intestate as respects all or any of her personal property, and does not leave any legitimate issue her surviving, the illegitimate child, or if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.
- (2) Where, after the commencement of this Act, an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his personal property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

9 Declaration of legitimacy, etc.

- (1) Any person who is a natural-born Tongan subject, or whose right to be deemed a natural-born Tongan subject depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled in

Tonga or claims any real or personal estate situate in Tonga, apply by petition to the Court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

- (2) Any person who is so domiciled or claims as aforesaid, may apply to the Court for a decree declaring his right to be deemed a natural-born Tongan subject.
- (3) Applications under subsections (1) and (2) of this section may be included in the same petition and on any such application the Court shall make such decree as the Court thinks just, and the decree shall be binding on the Crown and all other persons whatsoever:

Provided that the decree of the Court shall not prejudice any person—

- (a) if it is subsequently proved to have been obtained by fraud or collusion; or
 - (b) unless that person has been cited or made a party to the proceedings or is the heir-at-law, next of kin, or other real or personal representative of, or derives title under or through, a person so cited or made a party.
- (4) A copy of every petition under this section and of any affidavit accompanying the petition shall be delivered to the Attorney-General at least one month before the petition is presented or filed, and the Attorney-General shall be the respondent on the hearing of the petition and on any subsequent proceedings relating thereto. (*Amended by Act 46 of 1988.*)
 - (5) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in Tonga or elsewhere and whether a natural-born Tongan subject or not, apply by petition to the Court for a decree that he or his parent or remoter ancestor has been legitimated by virtue of this Act.
 - (6) In any application under this section such persons shall, subject to rules of court, be cited in the proceedings or otherwise summoned as the Court shall think fit, and any such persons may be permitted to become parties to the proceedings and to oppose the application.
 - (7) The provisions of the Divorce Act and the Court Fees Act shall, so far as applicable, extend to any proceedings under this section.
 - (8) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

THE SCHEDULE

(Section 3(4))

REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS

1. The Registrar may, on production of such evidence as appears to him to be satisfactory, authorize at any time the re-registration of the birth of a legitimated person whose birth is already registered under the Births, Deaths and Marriages Registration Act and such re-registration shall be effected in such manner and at such place as the Registrar may by regulation prescribe:¹

Provided that the Registrar shall not authorize the re-registration of the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless—

- (a) the name of a person acknowledged himself to be the father of the legitimated person has been entered in the register; or
- (b) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction.

2. It shall be the duty of the parents of a legitimated person, or in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent to furnish to the Registrar information with a view to obtaining the re-registration of the birth of that person within 3 months after the date of the marriage.

3. Where the parents or either of them fail to furnish the necessary information within the time limited for the purpose the Registrar may at any time after the expiration of that time require the parents of a person whom he believes to have been legitimated by virtue of this Act or either of them to give such information concerning the matter as he may consider necessary, verified in such manner as he may direct, and for that purpose to attend personally either at a registrar's office or at any other place appointed by him within such time not being less than 7 days after the receipt of the notice as may be specified in the notice.

4. The failure of the parents or either of them to furnish information as required by this Schedule in respect of any legitimated person shall not affect the legitimation of that person.

5. No fee for re-registration under this Schedule shall be charged if the necessary information for the purpose is furnished within the time above specified; but in

¹ (See the Registrar-General's Directions in the Subsidiary Legislation under the Births, Deaths and Marriages Registration Act, Cap 42 (esp. paragraph 11).)

any other case there shall be charged in respect of such re-registration such fees not exceeding in the aggregate \$1 as may be prescribed by regulations under this Schedule.

6. This Schedule shall be construed as one with the Births, Deaths and Marriages Registration Act.