



# Law Reform (Married Women and Tortfeasors) Act 1935

## 1935 CHAPTER 30

An Act to amend the law relating to the capacity, property, and liabilities of married women, and the liabilities of husbands; and to amend the law relating to proceedings against, and contribution between, tortfeasors. [2nd August 1935]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

### PART I

#### CAPACITY, PROPERTY, AND LIABILITIES OF MARRIED WOMEN; AND LIABILITIES OF HUSBANDS

#### **1 Capacity of married women.**

Subject to the provisions of this Part of this Act, and subject, as respects actions in tort between husband and wife, to the provisions of section twelve of the Married Women's Property Act, 1882, a married woman shall—

- (a) be capable of acquiring, holding, and disposing of, any property; and
- (b) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligation; and
- (c) be capable of suing and being sued, either in tort or in contract or otherwise; and
- (d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders,

in all respects as if she were a feme sole.

## **2 Property of married women.**

- (1) Subject to the provisions of this Part of this Act all property which—
- (a) immediately before the passing of this Act was the separate property of a married woman or held for her separate use in equity; or
  - (b) belongs at the time of her marriage to a woman married after the passing of this Act; or
  - (c) after the passing of this Act is acquired by or devolves upon a married woman, shall belong to her in all respects as if she were a feme sole and may be disposed of accordingly :

Provided that nothing in this subsection shall interfere with or render inoperative any restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of any provision attaching such a restriction, contained in any Act passed before the passing of this Act, or in any instrument executed before the first day of January nineteen hundred and thirty-six.

- (2) Any instrument executed on or after the first day of January, nineteen hundred and thirty-six, shall, in so far as it purports to attach to the enjoyment of any property by a woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void.
- (3) For the purposes of the provisions of this section relating to restrictions upon anticipation or alienation—
- (a) an instrument attaching such a restriction as aforesaid executed on or after the first day of January, nineteen hundred and thirty-six, in pursuance of an obligation imposed before that date to attach such a restriction shall be deemed to have been executed before the said first day of January;
  - (b) a provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument only and not in the instrument by which the power was created; and
  - (c) the will of any testator who dies after the thirty-first day of December, nineteen hundred and forty-five, shall (notwithstanding the actual date of the execution thereof) be deemed to have been executed after the first day of January, nineteen hundred and thirty-six.

## **3 Abolition of husband's liability for wife's torts and ante-nuptial contracts, debts and obligations.**

Subject to the provisions of this Part of this Act, the husband of a married woman shall not, by reason only of his being her husband, be liable—

- (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or
- (b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

## **4 Savings.**

- (1) Nothing in this Part of this Act shall—
- (a) during coverture which began before the first day of January eighteen hundred and eighty-three, affect any property to which the title (whether vested or

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- contingent, and whether in possession, reversion, or remainder) of a married woman accrued before that date, except property held for her separate use in equity;
- (b) affect any legal proceeding in respect of any tort if proceedings had been instituted in respect thereof before the passing of this Act;
  - (c) enable any judgment or order against a married woman in respect of a contract entered into, or debt or obligation incurred, before the passing of this Act, to be enforced in bankruptcy or to be enforced otherwise than against her property.
- (2) For the avoidance of ..doubt it is hereby declared that nothing in this Part of this Act—
- (a) renders the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this Act had not been passed;
  - (b) exempts the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred, by her after the marriage in respect of which he would have been liable if this Act had not been passed;
  - (c) prevents a husband and wife from acquiring, holding, and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt or obligation, and of suing and being sued either in tort or in contract or otherwise, in like manner as if they were not married;
  - (d) prevents the exercise of any joint power given to a husband and wife.

## **5 Consequential amendments and repeals.**

- (1) The enactments mentioned in the first column of the First Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule.
- (2) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

## **PART II**

### **PROCEEDINGS AGAINST, AND CONTRIBUTION BETWEEN, TORT-FEASORS**

## **6 Proceedings against, and contribution between, joint and several tort-feasors.**

- (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—
  - (a) judgment recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage;
  - (b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;

- (c) any tort-feasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.
- (2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.
- (3) For the purposes of this section—
- (a) the expressions " parent " and " child " have the same meanings as they have for the purposes of the Fatal Accidents Acts, 1846 to 1908; and
  - (b) the reference in this section to " the judgment first given " shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.
- (4) Nothing in this section shall—
- (a) apply with respect to any tort committed before the commencement of this Part of this Act; or
  - (b) affect any criminal proceedings against any person in respect of any wrongful act; or
  - (c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

## **7 Commencement of Part II.**

This Part of this Act shall come into operation on such date as the Lord Chancellor may by order appoint.

## **PART III**

### SUPPLEMENTARY

## **8 Short title, extent and construction of references.**

- (1) This Act may be cited as the Law Reform (Married Women and Tort-feasors) Act, 1935.
- (2) This Act shall not extend to Scotland or to Northern Ireland.
- (3) Any reference in this Act to any other enactment or to any provision of any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment, or that provision, as the case may be, as amended by any subsequent enactment including this Act.

## SCHEDULES

### FIRST SCHEDULE

Section 5.

#### CONSEQUENTIAL AMENDMENTS EFFECTED BY PART I OF ACT

Enactments to be Amended.	Amendment.
The Married Women's Property Act, 1882.	In section seven for the words " her separate estate " there shall be substituted the word " she. "  In section eleven, for the words " separate use " there shall be substituted the words " own benefit. "
The Larceny Act, 1916	In section twelve for the words " such property belonged to her as " there shall be substituted the words " she were. "  In subsection (1) of section thirty-six, for the words " such property belonged to her as " there shall be substituted the words " she were. "
The Supreme Court of Judicature (Consolidation) Act, 1925.	For subsection (1) of section one hundred and ninety-four there shall be substituted the following subsection:—  “(1) In every case of judicial separation— (a) as from the date of the decree and so long as the separation continues any property which is acquired by or devolves upon the wife shall not be affected by any restraint upon anticipation attached to the enjoyment by the wife of any property under any settlement, agreement for a settlement, will, or other instrument; and if she dies intestate shall devolve as if her husband had been then dead; (b) if alimony has been ordered to be paid and has not been duly paid by the husband he shall be liable for necessaries

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Enactments to be Amended.

Amendment.

supplied for the use of the wife.""

SECOND SCHEDULE

Section 5.

ENACTMENTS REPEALED BY PART I OR ACT

Session and Chapter.	Short Title.	Extent of Repeal.
2 & 3 Anne, c. 20.	An Act the title of which begins with the words " An Act for the " making more effectuall "and ends with the words " for the same purpose."	In section six the words " or " women covert without " their husbands."
43 Geo. 3. c. 108.	The Gifts for Churches Act, 1803.	In section one the words " nor women covert without their husbands."
55 Geo. 3. c. 147.	The Glebe Exchange Act, 1815.	In section five the words " or femes covert without their husbands"; in section twelve the words "husbands", "feme coverts", and " feme covert"; in section thirteen the word "husbands ", and the words "femes covert"; and in section seventeen the words " or feme couvert," " or husband," " or she," and " or feme sole."
3 & 4 Will. 4. c. 74.	The Fines and Recoveries Act, 1833.	Section twenty-four.
4 & 5 Vict. c. 20.	The Excise Management Act, 1841.	In section seven the words " whose husband shall be-" come insane or idiot or be " otherwise rendered in-" capable of transacting his " affairs or whose husband shall be separated " from her and be out of the " limits of the United Kingdom " and the proviso.
4 & 5 Vict. c. 38.	The School Sites Act, 1841.	In section five the words " and her husband ".
36 & 37 Vict. c. 50.	The Places of Worship Sites Act, 1873.	In section one the words "or a married woman" and the

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Session and Chapter.	Short Title.	Extent of Repeal.
45 & 46 Vict. c. 75.	The Married Women's Property Act, 1882.	word " husband "; and in section three the words " and her husband". Sections one to five; in section six the word " separate " where that word first occurs; and the words for her separate use " ; in section seven the word " separate " where that word first occurs, and the words from " whether the same" to " recorded, or not"; in section eleven the words " by " virtue of the power of " making contracts herein before contained "; in section twelve the word " separate " ; in section thirteen the words " in " respect and to the extent " of her separate property" and the words from " and all sums recovered " to " recovered in respect thereof"; sections fourteen and fifteen; in section twenty-three the word " separate."
56 & 57 Vict. c. 63.	The Married Women's Property Act, 1893.	Section one.
7 Edw. 7. c. 18	The Married Women's Property Act, 1907.	In section three the words " which is by virtue of the " Married Women's Property Act, 1882, made " her separate property."
1 & 2 Geo. 5. c. 46.	The Copyright Act, 1911.	In section sixteen, in subsection (4) thereof, the word " separate."
4 & 5 Geo. 5. c. 59.	The Bankruptcy Act, 1914.	In section fifty-two, the word " separate "; and section one hundred and twenty-five.
6 & 7 Geo. 5. c. 50.	The Larceny Act, 1916.	In section thirty-six, in subsection (1) thereof the word " separate."
20 & 21 Geo. 5. c.17.	The Poor Law Act, 1930	In section fourteen, in subsection (4) thereof, the word " separate."