



Tonga

DIVORCE ACT

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DIVORCE ACT

*Acts Nos. 10 of 1927, 15 of 1944, 8 of 1953,
7 of 1960, 16 of 1974, 39 of 1988, 46 of 1988*

AN ACT TO DECLARE THE LAW RELATING TO DIVORCE AND TO REGULATE THE PROCEDURE IN SUITS FOR DIVORCE

Commencement [12th August, 1927]

1 Short title

This Act may be cited as The Divorce Act.

2 Interpretation.

In this Act, unless the context otherwise requires—

“**children of the family**” includes any legitimate children or stepchildren or any adopted children of the parties to the marriage and any other children who are ordinarily dependent on the parties to the marriage who—

- (a) are under the age of 18 years and are dependent upon the parties to the marriage for support, or
- (b) are over the age of 18 years and under the age of 25 years and are receiving full time instruction at any university, college school or other educational establishment, or are serving under articles or indentures with a view to qualifying

in a trade or profession, and are dependent upon the parties to the marriage for support; or

- (c) are over the age of 18 years and are dependent upon the parties to the marriage for support on account of physical or mental incapacity.

(Inserted by Act 39 of 1988.)

3 Grounds for divorce petition.

- (1) Any husband or wife who is at the time of the institution of the suit domiciled in the Kingdom may present a petition to the Supreme Court (hereinafter referred to as “the Court”) praying the Court to dissolve the marriage upon evidence—
 - (a) that since the celebration of the marriage, the respondent has committed adultery or has been sentenced to a term of imprisonment of not less than 5 years; or
 - (b) that the respondent has a former husband or wife still living; or
 - (c) that the respondent has wilfully deserted the petitioner for a continuous period of 2 years or more immediately preceding the presentation of the petition; or *(Amended by Act 39 of 1988.)*
 - (d) that the respondent is afflicted with an incurable disease capable of being transferred to the petitioner by contagion or infection; or is incurably of unsound mind and has been continuously under care and treatment for a period of at least 5 years immediately preceding the presentation of the petition; or *(Substituted by Act 39 of 1988.)*
 - (e) that the respondent at the time of the marriage is and continues to be incapable of consummating the marriage by reason either of some structural defect in the organs of generation which is incurable and renders complete intercourse impracticable or of some incurable mental or moral disability resulting in an invincible repugnance to sexual intercourse with the petitioner; or
 - (f) that the respondent and petitioner have been separated for a continuous period of 2 years or more immediately preceding the presentation of the petition without both of them maintaining or intending to maintain or renew normal marital relations or cohabitation with each other; or *(Amended by Act 39 of 1988.)*
 - (g) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. *(Inserted by Act 39 of 1988.)*
- (2) In calculating the continuous period for which—

- (a) the respondent has deserted the petitioner for the purpose of section 3(1)(c), or
- (b) the parties to a marriage have been separated for the purpose of section 3(1)(f),

no account shall be taken of any one period (not exceeding 3 months) during which the parties resumed cohabitation with a view to reconciliation; but no such period shall count as part of the period of desertion or the period for which the parties have been separated. (*Inserted by Act 39 of 1988.*)

- (3) For the purpose of sub-section (1)(d), a person of unsound mind shall be deemed to be under care and treatment while, and only while—
 - (a) he is liable to be detained in a hospital or other institution under any law for the time being in force in the Kingdom or he is receiving treatment as a voluntary patient under any law so in force; or
 - (b) he is receiving treatment for mental illness as a resident in:
 - (i) a hospital or other institution in the Kingdom; or
 - (ii) a hospital or other institution in any other country, being a hospital or other institution in which his treatment is comparable with the treatment provided in such hospital or institution as is mentioned in sub-paragraph (i),

and in determining for the purposes of sub-section (1)(d) whether any period of care and treatment has been continuous, any interruption of the period for 30 days or less shall be disregarded. (*Inserted by Act 39 of 1988.*)

4 Adulterers to be made co-respondents.

Where adultery is alleged in a petition or by a respondent, the petitioner or respondent, as the case may be, shall make the alleged adulterer a co-respondent, unless he is excused by the Court on special grounds from so doing.

5 Court to inquire as to connivance and condonation

- (1) On a petition for divorce it shall be the duty of the Court to satisfy itself so far as it reasonably can both as to the facts alleged and also as to whether the petitioner has been accessory to or has connived at or condoned the adultery or not and also to inquire into any countercharge which is made against the petitioner.
- (2) In considering whether adultery has been condoned, no account shall be taken of any one period (not exceeding 3 months) after the adultery became known to the petitioner and during which the parties resumed cohabitation with a view to reconciliation.

(Inserted by Act 39 of 1988.)

- (3) If on the evidence the Court is not satisfied that the alleged adultery has been committed or finds that the petitioner has during the marriage been accessory to or has connived at or condoned the adultery complained of or that the petition is presented or prosecuted in collusion with either of the respondents the Court shall dismiss the petition.
- (4) If the Court is satisfied on the evidence that the case for the petition has been proved and does not find that the petitioner has in any manner been accessory to or connived at or condoned the adultery or that the petition is presented or prosecuted in collusion with either of the respondents, the Court shall pronounce a decree for divorce:

Provided that the Court shall not be bound to pronounce a decree for divorce if it finds that the petitioner has during the marriage been guilty of adultery or if in the opinion of the Court he has been guilty—

- (a) of unreasonable delay in presenting or prosecuting the petition; or
- (b) of cruelty towards the other party to the marriage; or
- (c) of having without reasonable excuse deserted, or of having without reasonable excuse wilfully separated himself from, the other party before the adultery complained of; or
- (d) of such wilful neglect or misconduct as has conducted to the adultery.

6 Co-respondent may be dismissed from proceeding if evidence is insufficient

In any case in which on the petition of a husband for divorce the alleged adulterer is made a co-respondent or in which on the petition of a wife for divorce the person with whom the husband is alleged to have committed adultery is made a respondent, the Court may after the close of the evidence on the part of the petitioner direct the co-respondent or the respondent, as the case may be, to be dismissed from the proceedings if the court is of opinion that there is not sufficient evidence against him or her.

7 Respondent may obtain relief without presenting petition.

If in any proceedings for divorce the respondent opposes the relief sought, the Court may give to the respondent the same relief to which he would have been entitled if he had presented a petition seeking such relief.

8 Decree nisi.

Every decree for a divorce shall in the first instance be a decree nisi not to be made absolute until after the expiration of 6 weeks from the pronouncing thereof.

9 Duty of Attorney-General.

The Attorney-General or some person appointed by him shall attend the hearing of all divorce proceedings. (*Amended by Act 46 of 1988.*)

10 Information may be given to Attorney-General before decree absolute.

Any person at any time during the progress of the divorce proceedings or before the decree nisi is made absolute may give information to the Attorney-General or the principal officer of police in the district in which the proceedings are being taken, of any matter material to the due decision of the case. (*Amended by Acts 39 of 1988 and 16 of 1988.*)

11 Court to certify before decree absolute in separation case.

- (1) Where the Court has granted a decree nisi on the ground only of 2 years' separation pursuant to section 3(1)(f), the decree shall not be made absolute unless the Court has certified:
 - (a) that proper financial provision has been made for either party and any children of the family, or
 - (b) that no such provision should be made.
- (2) If in consequence of any such information or otherwise the Attorney-General has reason to believe that any of the parties to the petition are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case or that any of the said parties have not brought before the Court any material facts, he may after obtaining the leave of the Court intervene at any time before the decree is made absolute and show cause why such decree nisi in any proceedings for divorce should not be made absolute and may subpoena witnesses to prove the alleged collusion or suppression of material facts; and in any such case the Court may—
 - (a) make the decree absolute; or
 - (b) revoke the decree nisi; or
 - (c) require further inquiry; or
 - (d) otherwise deal with the case as the Court thinks fit.

- (3) Where a decree nisi of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted within 3 months from the date of granting of the decree, then, at any time thereafter the party against whom it was granted may make an application to the Court, and on that application the Court may exercise any of the powers mentioned in sub-section (2).

(Substituted by Act.39 of 1988.)

12 Effect of decree absolute on status.

As soon as any decree for divorce is made absolute either of the parties to the marriage may marry again as if the prior marriage has been dissolved by death:

Provided that it shall not be lawful for a man to marry the sister or half-sister of his divorced wife or of his wife by whom he has been divorced during the life-time of the wife, or the divorced wife of his brother or half-brother or the wife of his brother or half-brother who has divorced his brother during the life-time of the brother or half-brother.

13 Petitioner may claim damages.

- (1) A petitioner on a petition for divorce may claim any sum not more than \$1000 as damages from any person on the ground of adultery of that person with the wife or husband of the petitioner or respondent, as the case may be. *(Amended by Acts 8 of 1953 and 39 of 1988.)*
- (2) The court may direct in what manner the damages recovered are to be paid or applied.

14 Court may commit for non-payment of damages.

Where any person condemned in damages under the preceding section fails to pay at the time or in the manner ordered by the Court, the Court, where execution has been issued or not, may commit that person to prison for such period of imprisonment not exceeding 6 months as it may think fit.

15 Effect of decree on property rights.

Whenever a decree for divorce is pronounced, each of the parties to the marriage so dissolved shall retain his own property.

16 Costs.

The Court may make such order as to the payment of costs as it thinks fit; provided that an unsuccessful party shall always pay his own costs.

17 Interim orders for maintenance.

On a petition for divorce, the Court may make such interim orders as it thinks just for the payment of maintenance to any party and to any children of the family. (*Inserted by Act 39 of 1988.*)

18 Maintenance orders.

- (1) On granting a decree of divorce or at any time thereafter (whether before or after the decree is made absolute), the Court may, if it thinks fit make one or more of the following orders—
 - (a) an order requiring either party to secure to the other, to the satisfaction of the Court, such lump or annual sum for any term as the Court thinks reasonable having regard to his fortune (if any), his ability and the conduct of the parties;
 - (b) an order requiring either party to secure to the other, to the satisfaction of the Court, such lump or annual sum for any term as the Court thinks reasonable;
 - (c) an order requiring either party to pay to the other such lump sum as the Court thinks reasonable.
- (2) Any order made by the Court for the maintenance of a party or of children of the family may, at any time, upon application, be varied, suspended or revoked.
- (3) Any order made for the maintenance of a party shall cease upon the remarriage of that party.

(*Inserted by Act 39 of 1988.*)

19 Custody and maintenance of children of family.

In any proceedings for divorce the Court may make such orders as appear just with respect to the custody, maintenance and education of the children of the family. (*Amended by Act 39 of 1988.*)

20 Additional jurisdiction in proceedings by a wife.

- (1) Without prejudice to any jurisdiction exercisable by the Court apart from this section, the Court has jurisdiction to entertain proceedings by a wife,

notwithstanding that the husband is not domiciled in the Kingdom, in the case of any proceedings under this Act if—

- (a) the wife has been deserted by her husband; or
 - (b) the husband has been deported from the Kingdom under any law for the time being in force relating to deportation, and the husband was immediately before the desertion or deportation domiciled in the Kingdom; or
 - (c) the wife is resident in the Kingdom and has been ordinarily resident there for a period of 2 years immediately preceding the commencement of the proceedings, and the husband is not domiciled in any part of the Kingdom.
- (2) In any proceedings in which the Court has jurisdiction by virtue of subsection (1) the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in the Kingdom at the time of the proceedings.

(Inserted by Act 39 of 1988.)

21 Respondent beyond the kingdom.

Where it is shown to the satisfaction of the Court that the respondent has left the Kingdom and that no order has been made for the substituted service of the petition upon the respondent, the Court upon proof being adduced by the petitioner of the ground of his petition may pronounce a decree for divorce.

22 Proof of service in absence of party.

Except as is provided in the preceding section, the Court shall not in the absence of the respondent or co-respondent proceed to hear any evidence in proof of the grounds of a petition until proof of service of such petition upon the respondents is first given to the Court.

23 Power to make rules.

The Chief Justice may make Rules governing the procedure in divorce proceedings.