

**STATUTE LAW (MISCELLANEOUS AMENDMENTS)
ACT, 2008**

No. 11



of 2008

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of Cap. 27:01
3. Amendment of Cap. 29:03
4. Amendment of Cap. 29:06
5. Amendment of Cap. 31:01
6. Amendment of Cap. 33:02
7. Amendment of Act No. 32 of 2003

An Act to make sundry amendments in the Laws of Botswana.

Date of Assent: 25.06.08

Date of Commencement: 27.06.08

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Statute Law (Miscellaneous Amendments) Act, 2008.

Short title

2. The Pensions Act is amended —

- (a) in section 2, by substituting for the definition of the word “legal personal representative” the following new definition —
“legal personal representative” means the person in whom, by whatever system of law is applicable, the estate of a deceased officer is vested or, where such officer leaves a surviving spouse or other dependants, such person as the Ministry may designate as being the person who in all the circumstances of the case and in order to safeguard the interests of the surviving spouses or dependants should be awarded a gratuity;”;

Amendment
of Cap. 27:01

- (b) in section 7, by substituting for paragraph (b), the following new paragraph —

“(b) an order of any competent court for the payment of periodical sums of money towards the maintenance of the spouse or former spouse or minor child of the person to whom the pension, gratuity or other allowance has been granted”;

(c) in section 13 —

(i) in subsection (1) —

(aa) by deleting subparagraph (b) (iii) and substituting for subparagraphs (b) (i), (ii), (iv) and (vi), the following new subparagraphs —

“(i) if the deceased officer is survived by a spouse, a pension to the surviving spouse at a rate not exceeding ten - sixtieth of his or her annual pensionable emoluments at the date of the injury or P40 a year, whichever is the greater;

(ii) if the deceased officer is survived by a spouse to whom a pension is granted under subparagraph (i) and a child or children, a pension in respect of each child, until such child attains the age of 21 years, of an amount not exceeding one - eighth of the pension prescribed under subparagraph (i);

(iv) if the deceased officer is survived by a child or children and a spouse to whom a pension is granted under subparagraph (i) and the surviving spouse subsequently dies, a pension in respect of each child as from the date of the death of the surviving spouse until such child attains the age of 21 years, of double the amount prescribed in subparagraph (ii);

(v) if the deceased officer is not survived by a spouse, or if no pension is granted to the surviving spouse and if the parent or parents of the deceased officer were wholly or mainly dependent on the officer for their support, a pension to the parent or parents of an amount not exceeding the pension which might have been granted to a surviving spouse.”

(bb) by substituting for paragraph (f) of the proviso the following new paragraph —

“(f) where a deceased officer has contracted polygamous marriages and leaves more than one widow, or children born of such marriages and it is impracticable to grant a pension or pensions in the manner prescribed in any of the preceding provisions of this subsection, the President may —

- (i) grant a pension, not exceeding the pension which might be granted to a surviving spouse under the said provisions to be divided between the polygamous widows in such proportions as the President may direct; and
- (ii) grant a pension to each such child not exceeding the pension which might have been granted to a child under the said provisions.”;

(ii) in subsection (2) by substituting for that subsection the following new subsection —

“(2) No pension shall be granted to a surviving spouse where the surviving spouse was not married to the deceased officer at the date of injury.”;

(iii) by repealing subsection (3).

3. The Married Persons Property Act is amended —

Amendment
of Cap. 29:03

(a) in section 2, by deleting the definition of the word “matrimonial domicile”;

(b) in section 3, by substituting for subsection (1), the following new subsection —

“(1) Community of property and community of profit and loss or any liabilities or privileges resulting therefrom shall not attach to any marriage solemnized between spouses one of whom is domiciled in Botswana, unless such spouses have, by an instrument in writing, signed by each of them prior to the solemnization of their marriage and in the presence of two persons, one of whom shall be an administrative officer or justice of the peace or a commissioner of oaths, who shall subscribe thereto as witness, express their wish to be exempt from the provisions of this Act.”;

(c) by deleting section 4; and

(d) in paragraph (b) of Form A of the Second Schedule, by deleting the words “and the marital power” which appear therein.

4. The Matrimonial Causes Act is amended —

Amendment
of Cap. 29:06

(a) in section 7 (1) —

(i) by inserting immediately after the word “proceedings” the following provisions “either spouse is domiciled in Botswana or has been resident within Botswana for a continuous period of three years immediately preceding the date of the institution of proceedings.”; and

(ii) by deleting paragraphs (a) and (b) thereof;

- (b) in section 8, by substituting for that section, the following new section —
“8. The High Court shall have jurisdiction in proceedings for presumption of death and dissolution of marriages and for nullity under this Act if the plaintiff was domiciled in Botswana at the date of the action, or was resident in Botswana at the date of the action and has been ordinarily resident in Botswana for a period of three years immediately preceding the date of the petition.”;
- (c) in section 9, by substituting for that section, the following new section —
“9. A court with jurisdiction to try an action for divorce or judicial separation shall also have jurisdiction to hear an application by a spouse who is a party or an intending party to such action before the said court for —
(a) leave to sue *in forma pauperis*;
(b) an interdict pending the action;
(c) an order for contribution towards costs; or
(d) an order for maintenance *pendente lite*.”;
- (d) in section 25, by substituting for subsections (1) and (2), the following new subsections —
“(1) In any action for divorce or nullity of marriage, the court may make such interim orders for the payment of maintenance to a spouse as the court may think just and equitable.
(2) On any decree for divorce or nullity of marriage, the court may if it thinks fit, order —
(a) that a spouse shall, to the satisfaction of the court, secure for the other spouse such gross sum of money or annual sum of money for any term, not exceeding the other spouse’s life, as, having regard to the other spouse’s fortune, if any, to the ability of the first mentioned spouse and to the conduct of the parties, the court may deem reasonable; and
(b) that a spouse should pay to the other spouse, during their joint lives, such periodical sum for the maintenance and support of the other spouse as the court may think reasonable, and any such order may either be in addition to or instead of an order made under subsection (1).”;
- (e) in section 27, by substituting for that section, the following new section —
“27. (1) In any action for judicial separation, the court may make such interim order for the payment of maintenance to a spouse as the court thinks just.
(2) In or at any time after a decree for judicial separation, the court may make such order for the payment of maintenance to a spouse as the court thinks just.”;

- (f) in section 28, by substituting for subsection (2), the following new subsection —
“(2) On any decree of divorce, declaration of nullity of marriage or on a decree of divorce where the divorce is made on the grounds of a spouse’s insanity, the court shall have power to order the other spouse to secure for the benefit of the children such gross sum of money or annual sum of money as the court may deem necessary.”.
- 5. The Administration of Estates Act is amended —**
- (a) in section 28, by substituting for subsection (5), the following new subsection —
“(5) Letters of administration shall not be issued to a spouse married in community of property unless the other spouse consents in writing.”;
- (b) in section 79, by substituting for subsection (1), the following new subsection —
“(1) It shall not be lawful for any person except —
(a) a parent of a minor;
(b) where the parent of a minor is dead or the parent has abandoned the minor, the surviving parent or the parent who has not abandoned the minor, as the case may be; or
(c) the parent of a minor to whom custody of such minor has been given by a competent court,
by any will or other deed to nominate any tutor or tutors to administer and manage the estate or to take care of the person of that minor:
Provided that nothing in this section shall prevent any person who gives or bequeaths any property to any person from nominating a curator or curators to administer and manage the property during the minority or during the insanity of the donee or legatee, in like manner and as fully in all respects as the same might lawfully have been done prior to the commencement of this Act.”;
- (c) in section 91 by substituting for subsection (2), the following new subsection —
“(2) Letters of confirmation shall not be issued to a spouse married in community of property unless the other spouse consents in writing.”;
- (d) in section 100, by substituting for paragraph (ii), the following new paragraph —
“(ii) letters of curatorship may be granted to a spouse as curator or curatrix (as the case may be) of the other spouse or the other spouse’s property without such other spouse’s consent.”;
- (e) in Form A of the First Schedule —
(i) by substituting for paragraph 5, the following new paragraph —
“5. Occupation in the life of the deceased”; and
(ii) by substituting for paragraph 6, the following new paragraph —
“6. Ordinary place of residence of the deceased”.

6. The Deeds Registry Act is amended —

(a) in section 18, by substituting for that section, the following new section —

“Provi-
sions
relating to
married
persons

18. (1) All deeds executed or attested by the Registrar, or attested by a notary public and required to be registered in the deeds registry, and made by or on behalf or in favour of any person shall disclose the full name and marital status of the person concerned, whether married, widowed or divorced, as the case may be.

(2) If the person is married the full name of his or her spouse shall be disclosed and it shall be stated whether marriage was contracted in or out of community of property or is governed by the law of any other country which does not impose community of property on marriage.

(3) A person married whether in community of property or not shall not require the assistance of his or her spouse in executing any deed or document required or permitted to be registered in the deeds registry or required or permitted to be produced in connection with any such deed or document, and immovable property may be transferred or ceded to the person as if such person was married out of community of property.

(4) Immovable property bequeathed or donated to a person married in community of property may be transferred or ceded to that person and shall not form part of the joint estate where, by a condition of the bequest or donation it is excluded from the community of property.

(5) If immovable property not excluded from the community is registered in the name of a spouse married in community of property, neither spouse may, irrespective of when that property was so registered, alone deal with such property unless he has the consent, in writing, of the other spouse, or has been authorised by an order of court to deal therewith.

(6) If immovable property has been acquired by one or other of two spouses married in community of property in such a manner that the said property would on transfer or cession thereof become part of the joint estate, and the marriage has been dissolved by the death of one of the spouses before the property is transferred or ceded, the property shall be transferred or ceded to the joint estate of the spouses, pending liquidation thereof, and shall, subject to the provisions of any disposition affecting the property, be deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

(7) When immovable property or a bond is registered in the name of a person, who has married since the registration was effected or who at the date of the registration was married out of community of property or whose marriage was not subject to community of property and who has since widowed or divorced, it shall be competent for the Registrar on written application by such a person and on production of the relevant deed and of proof to his satisfaction of the changes in such a person's status, to record such change on such deed and the registers:

Provided that where there are two or more interdependent deeds, all such deeds shall be produced for endorsement.”;

(b) in section 55 (4), by deleting paragraph (c).

7. The Companies Act is amended in section 269 (1), by deleting paragraph (a) (i).

Amendment
of Act No. 32
of 2003

PASSED by the National Assembly this 7th day of April, 2008.

E.S. MPOFU,
Clerk of the National Assembly.