

**DRAFT LAW REFORM (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 200-**

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by the Legislation Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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## **European Convention on Human Rights**

The President of the Legislation Committee has made the following statement -

In the view of the Legislation Committee the provisions of the Draft Law Reform (Miscellaneous Provisions) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

## REPORT

At Jersey customary law, an agreement to marry is subject to the general law of contract. The rules governing such a contract are similar to those governing a contract of employment. It follows that there still exists the action for breach of promise of marriage in respect of which damages may be claimed by the intending spouse. The purpose of this draft Law is to remove agreements to marry from the general law of contract and to regulate such an agreement as though it were a simple domestic agreement made between husband and wife, which the law regards as unenforceable in the absence of *cause*.

In 1985 the Royal Court (Sir Frank Ereaut presiding) held that, although the action for breach of promise of marriage had been abolished in England and Wales as being against public policy and incongruent with the times, it remained a valid cause of action in Jersey. In that judgement, the [then] Bailiff observed -

*“It is stated that the two main arguments in favour of abolition were, first, that it was contrary to public policy to allow the threat of legal action to force marriage on an unwilling party, and secondly, that it was a relic of ‘those bygone days’ when it could be claimed that ‘marriage and a settlement were the one object in a woman’s life’.”*

The Court went on the state -

*“We certainly think that the Legislation Committee might with advantage consider the arguments for and against the retention of this type of action but it is our duty to apply the law of Jersey as best we can and a breach of promise action remains a perfectly valid action under our law.”*

In 2001 the Royal Court again heard an action in damages for breach of promise of marriage. Lord Carlisle Q.C., presiding, rejected defending counsel’s submission that the action was today archaic and anachronistic and that it should be declared contrary to public policy in Jersey. But the Court went on to say that it -

*“... [found]... itself in sympathy with much of the submission made by counsel. Actions for breach of promise of marriage do seem somewhat archaic and the relic of an earlier age . . . This same issue was raised...[in 1985] ... when Ereaut, Bailiff, specifically held that such a right of action existed in Jersey and that, whilst it had been abolished in England in 1970, its continued existence in Jersey was recognised in Article 1(2)(b) of the Customary Law Amendment (Jersey) Law 1948 and that no action had since been taken to abolish it by statute. It is now over thirty years since the action was abolished in England and over sixteen years since the Bailiff gave judgment in... [1985] ...and we would reiterate what was said at the time, namely: ‘we certainly think that the Legislation Committee might with advantage consider the arguments for and against retention of this type of action’ . . .”*

In the opinion of the Legislation Committee, the action in contract for breach of promise of marriage is indeed archaic. In England and Wales as in many other countries, it has it long been abolished. This *projet de loi* would, accordingly, abolish that right of action.

The draftsman’s Explanatory Note sets out the effect of each Article of the draft Law and it is unnecessary to repeat that clear exposition in this Report.

It is necessary however to highlight one area in which the draft Law would preserve a right of action. The abolition of the action for breach of promise of marriage could create injustice if, for example, a woman in good faith entered into a marriage that was void because the man did not disclose that he was already married: she would, if he died without making a will, be in a deplorable position. She would have no claim against the estate and would not have the reserved rights of a spouse under Jersey law.

In England and Wales, the surviving ‘spouse’ in this situation was protected (when the action for breach of promise was abolished) by being treated as a dependent for the purposes of the Inheritance (Family Provision) Act 1938 [the Act applicable at that time] under which the Court was empowered to make provision for the maintenance of the survivor. The same protection is afforded in England today - albeit under different statutory provisions. In Jersey, however, there is no counterpart to the Inheritance (Family Provision) Act and, under Jersey rules of succession, the ‘void spouse’ (be it the man or the woman) would be excluded altogether from a right of inheritance in the absence of provision for him or her in the other’s will. In order to overcome this potential injustice, the draft Law would keep alive the action for breach of promise of marriage in favour of the surviving ‘spouse’ of a void marriage.

### Conclusion

When the action for breach of promise of marriage was abolished in England and Wales by the Law Reform (Miscellaneous Provisions) Act 1970, it was stated<sup>[1]</sup> that -

*“This Act abolishes some ancient causes of action relating to marriage and the family which date back to feudal times, when marriage was primarily a property deal and a wife and children were part of a man’s possessions.”*

A similar observation may be made today in respect of the background to this draft Law. The Royal Court has, on at least two occasions, commented upon the archaic nature of this right of action and invited the legislature to consider whether or not it ought to be preserved.

The Legislation Committee is in no doubt that the right of action is a relic of the past and (subject to the reservation described above<sup>(2)</sup>) has no place in the 21st Century. This has long been recognised in many other jurisdictions and the abolition of this cause of action in this jurisdiction is long overdue.

This draft Law has no implications for the financial or manpower resources of the States.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 18th July 2002 the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Legislation Committee the provisions of the Draft Law Reform (Miscellaneous Provisions) (Jersey) Law 200- are compatible with the Convention Rights.

## **Explanatory Note**

This draft Law amends the law regarding the end of an agreement to marry.

*Article 1* is the interpretation provision.

*Article 2* provides that an agreement to marry does not give rise to contractual rights. It effectively abolishes the customary law right to bring an action for damages for breach of promise of marriage.

*Article 3* provides that, if a party to an agreement to marry makes a gift to the other on the condition that it must be returned if the agreement is ended, the fact that the person making the gift ends the agreement does not affect his or her right to its return. There is a rebuttable presumption that an engagement ring is an absolute gift and, accordingly, need not be returned.

*Article 4* preserves a right for a person who, in good faith, entered into a void marriage to make a claim in damages against the estate of the deceased partner. Such a claim would hitherto be brought as an action for breach of promise of marriage. The right is not preserved in a case where the marriage has been annulled or dissolved already as, in the proceedings for annulment or dissolution, the court may make an order for financial provision.

*Article 5* makes an amendment consequential on *Article 4*.

*Article 6* is the citation and commencement provision.

**LAW REFORM (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 200-**

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**A LAW** to abolish the customary law right to bring an action for breach of promise of marriage, subject to a saving for such actions in respect of void marriages; to make provision, upon an agreement to marry being ended, for the return of gifts made by one of them to the other; and for purposes connected therewith; sanctioned by Order of Her Majesty in Council of the

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*(Registered on the            day of            200-)*

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**STATES OF JERSEY**

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The            day of            200-

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**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

**ARTICLE 1**

**Interpretation**

In this Law, “commencement date” means the date this Law comes into force.

**ARTICLE 2**

**Agreement to marry unenforceable**

- rights.
- (1) An agreement between 2 persons to marry one another shall not have effect as a contract giving rise to legal
  - (2) No cause of action shall lie for breach of such an agreement, whatever the law applicable to it.
  - (3) This Article -
    - (a) shall not affect any action commenced before the commencement date; but
    - (b) shall otherwise have effect in relation to agreements entered into before the commencement date.

**ARTICLE 3**

**Return of gifts**

- (1) A party to an agreement to marry (“the giver”) who makes a gift of property to the other party to the agreement on the express or implied condition that it shall be returned if the agreement is ended shall not be prevented from recovering the property by reason only that the giver ends the agreement.
- (2) The gift of an engagement ring shall be presumed to be an absolute gift.
- (3) The presumption in paragraph (2) may be rebutted by proving that the ring was given on the express or implied condition that it should be returned if, for any reason, the marriage does not take place.

**ARTICLE 4**

**Damages for surviving party to void marriage**

(1) Where a person dies after the commencement date (“the deceased”) and is survived by someone (“the survivor”) who, whether before or after the commencement date had, in good faith, entered into a void marriage with the deceased, then, notwithstanding Article 2 of this Law, a cause of action shall continue to accrue to the survivor in damages against the estate of the deceased.

(2) A cause of action shall not so accrue if the marriage of the deceased and the survivor was dissolved or annulled during the deceased’s lifetime and the dissolution or annulment is recognized by the law of the Island or if the survivor has, during the lifetime of the deceased, entered into a later marriage.

## ARTICLE 5

### **Amendment of Customary Law Amendment (Jersey) Law 1948**

After Article 1(2) of the Customary Law Amendment (Jersey) Law 1948, as amended,<sup>[3]</sup> there shall be inserted the following paragraph -

“(2A) Paragraph (2)(b) of this Article shall have effect only for the purposes of the cause of action preserve by Article 4 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 200.<sup>[4]</sup>”.

## ARTICLE 6

### **Citation and commencement**

This Law may be cited as Law Reform (Miscellaneous Provisions) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

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<sup>[1]</sup> See Current Law Statutes annotated (1970) - general note.

<sup>[2]</sup> In relation to the protection of the surviving ‘spouse’ of a void marriage.

<sup>[3]</sup> Tome VII, page 477 and Volume 2001, page 219.

<sup>[4]</sup> P.130/2002.