

# The Management of the Property and Interests of a Person Suffering from a Mental Disorder

1. The Mental Health Act defines a mental disorder as a mental illness, arrested or incomplete development of the mind, psychopathic disorder or disability of mind.
2. The Supreme Court has the power to manage and administer the property affairs and interests of a person suffering from a mental disorder.
3. However, in order to bring a mentally ill person under the jurisdiction of the court there must be medical evidence to satisfy the court that the person is incapable by reason of a mental disorder. This evidence would be obtained from the psychiatrist who has been responsible for the person's treatment. It is not simply enough for an assertion of the person's mental incapacity to be made. In order to bring the person under the Court's jurisdiction, the person must have been medically diagnosed as suffering from a mental disorder.
4. The application may be made by any person related by blood or marriage to the supposed mentally incapable person or by any person authorized in that behalf by the Minister of Health.
5. The primary concern of courts when dealing with persons who may be mentally incapable is to make a determination that is in the best interests of that person. For example, where a mental patient requires an operation and by virtue of their disability is incapable of giving that consent, an application may be made to the court for a declaration that the operation can be legally performed despite their inability to consent to it.<sup>1</sup>

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<sup>1</sup> F. In re [1989] H.L.J. No. 5 Lord Brandon of Oakbrook stated: *In my opinion, however, the common law does not so fail. In my opinion, the solution to the problem which the common law provides is that a doctor can lawfully operate on, or give other treatment to, adult patients who are incapable, for one reason or another, of consenting to his doing so, provided that the operation or other treatment concerned is in the best interests of such patients... In the case of adult patients suffering from mental disability, they will normally, in accordance with the scheme of the Mental Health Act 1983, be either in the care of guardians, who will refer them to doctors of medical treatment, or of doctors at mental hospitals in which the patients either reside voluntarily or are detained compulsorily. It will then again be the duty of the doctors concerned to use their best endeavors to do, by way of either an operation or other treatment, that which is in the best interests of such patients.*

*The application of the principle which I have described means that the lawfulness of a doctor operating on, or giving other treatment to, an adult patient disabled from giving consent, will depend not on any approval or sanction of a court, but on the question whether the operation or other treatment is in the best interests of the patient concerned."*

6. As may appear necessary or expedient a judge has the power to make various orders relating to the property and affairs of the mentally incapable person. An order may be made for the maintenance or other benefit of the mentally incapable person or his family. Thus, if before the person became mentally incapable, he had accumulated monies in a saving account, application may be made to the court for directions regarding the use of the money, for example, to pay his medical expenses or expenses associated with his children's welfare and maintenance.
7. The court may also give directions as to the carrying out of any contract entered into by the mentally ill person<sup>2</sup>. The general premise is that a person suffering from a mental disorder will be bound by this contract unless he shows that owing to his mental condition, at the time of making the contract he did not know what he was doing and that the other party was aware of his incapacity. Evidence that the person is well known in the neighborhood to be suffering from a mental illness will not be admissible to prove that the other party to the contract knew of his mental incapacity. As mentioned earlier, the best evidence is diagnosis or treatment of the mental illness.
8. Other powers which the judge may make orders or give directions include authority for the sale, exchange, charging or other disposition of or dealing with any property of the mentally incapable person, the carrying on by a suitable person of any profession, trade or business of the mentally incapable person and the conduct, subject to the supervision of an officer of the court, of legal proceedings in the name of the mentally incapable person or on his behalf.
9. The judge has the authority to appoint a receiver to take charge of the property and affairs of the mentally ill person. The receiver's power is limited to doing only those things which the judge has directed or ordered him to do. He cannot go outside the authority of what the judge has ordered him to do. His job is to receive and preserve the person's assets.

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<sup>2</sup> Although there has been no authoritative decision, it has been suggested that this provision also applies to contracts made in a lucid interval by a person even after a judge has found that he is mentally incapable of managing and administering his property and affairs.