

"Does he really get ½?" –
THE PROPERTY (RIGHTS OF SPOUSES) ACT 2004

1. The object of this paper is to examine the provisions of the new Property (Rights of Spouses) Act ("the Act") and to consider the legal and practical implications of its provisions. To put the Act in perspective, we will review the law relating to the division of matrimonial property before the promulgation of the Act and examine decisions from jurisdictions with similar provisions.
2. The question posed in the title is intended to provoke thought and discussion, given that this Act has been promulgated in at a time when the socio-economic status of Jamaican women is significantly better from when the Act was first conceived. The Act is said to reflect recommendations of the Family Law Committee, initially appointed in 1974, under the chairmanship of the former President of the Court of Appeal, Honourable Justice Ira Rowe. The Act was intended to remedy the deficiencies of the existing law and to provide a statutory scheme which would achieve an equitable division of assets between spouses on the breakdown of marriage. In reality, thirty years ago, the factual matrix of our society was that often times, as between a husband and wife, the husband had the greater financial status in that he was usually the sole breadwinner and chief property owner in the household. And so, in divorce proceedings women were often left with the bitter end of the stick. We all know that today this no longer the case; in today's society, a growing number of women now share an equal or greater financial standing in a relationship.

The Resolution of Matrimonial Property Disputes: Pre 2004

3. Essentially, the law which governed property relations between married persons were based on a separate property system whereby proprietary

rights of either party in a marriage was not affected by the fact of the marriage; ownership was determined primarily by who paid for the property.

4. Section 16¹ of the Married Women's Property Act ("the MWP Act") provided for the determination of questions relating to title of property between husbands and wives in a summary way, by an application to a judge of the Supreme Court or to the Resident Magistrate of the parish in which either party resides. Proceedings under the MWP Act were commenced by originating summons supported by affidavit evidence. Properly, the proceedings had to be brought while the marriage subsisted that is, before a decree absolute.² It should be noted though, that the action could have been brought by writ after the marriage had ended.³
5. In the case of an application to a Resident Magistrate's Court, it had jurisdiction irrespective of the value of the property in dispute. The section was a procedural provision only and did not therefore entitle or permit a court to vary the existing proprietary rights of the parties, as it conferred no rights on either party. Consequently, resort was had to principles of common law and/or equity and in particular the law of trust in order to determine parties' rights.
6. Two fundamental rules emerged from two leading English cases Pettit v. Pettit⁴ and Gissing v. Gissing⁵, decided within a year of each other. These are described in *Bromley's Family Law* in this way:

¹ Section 16 provides that "in any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society, as aforesaid in whose books any stocks, funds or shares of either party are standing, ... and the Judge may make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as and any inquiry touching the matters in question to be made in such manner as he shall think fit."

² Mowatt v. Mowatt (1979) 28 WIR 96.

³ Forrester v. Forrester (1982) Suit No. C.L. 1978/F-108, Judgment, 12/11/82.

⁴ [1970] A. C. 777

⁵ [1971] A. C. 886

*"It is clear from Pettit v Pettit that English law has no doctrine of community of property or any separate rules of law applicable to family assets. Consequently, if one spouse buys property intended for common use with the other – whether it is a house, furniture or a car – this cannot per se give the latter any proprietary interest. From this follows the second principle, stated in Gissing v. Gissing, that if either of them seeks to establish a beneficial interest in property, the legal title to which is vested in the other, he or she can do so only by establishing that the legal owner holds the property on trust for the Claimant."*⁶

7. These principles have been adopted in Jamaica and applied in different ways in several cases. In Stewart v. Stewart⁷ Ellis J. observed:

"in determining property rights a Court is to find out what the intention of the parties respecting their proprietary interest in the property. The evidence must be directed mainly to enable the Court to so find out. The intention which the Court is to find out is that of the parties at the time of acquisition".

8. The Court was therefore left to try and ascertain the parties' intention, in circumstances where the parties in all likelihood, had given no thought to the question at the relevant time. In the absence of direct evidence of an agreement, the Court was therefore obliged to draw inferences from the conduct of the parties at the time. While this exercise may legitimately result in a Court inferring an intention, which the parties never consciously had, what the Court cannot do is *"impute to them an agreement they clearly did not make"*⁸.

9. Where the property was registered in the name of one party only, the determination of the beneficial interest was, in most cases, difficult to resolve because of the nature of the relationship of husband and wife. The

⁶ Family Law, 7th ed., page 530

⁷ Suit No. E 122 of 1982, Judgment Feb. 8, 1986

⁸ Bromley Family Law, Ibid page 530

law made no presumption of a beneficial interest and the party in whom the legal estate was not vested had to resort to the law of trust to establish such an interest. In Azan v. Azan,⁹ Forte, J. A. declared that the principles to be used by a court to determine whether or not a trust, were to be found in Gissing v. Gissing and in the analysis of the Vice-Chancellor in Grant v. Edwards¹⁰:

"If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the Claimant) in order to establish a beneficial interest has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated:

- (a) That there was a common intention that both should have a beneficial interest; and*
- (b) That the Claimant has acted to his or her detriment on the basis of that common intention".¹¹*

Forte J.A. observed that in circumstances where there was an express agreement that there should be joint beneficial interest, this would be sufficient. *"However, where, as in most cases, there was no such agreement, the common intention of the parties could be inferred from their conduct"*¹². Substantial contributions, whether direct or indirect, to the acquisition of the property are among the matters from which an inference may be drawn of a common intention to share in the beneficial interest in the property. As to actions to the detriment of the claimant, Azan v. Azan made it clear that those actions must be related to and upon the faith of the common intention, that the claimant should have a proprietary interest. In that case it was held that there was no evidence of common intention, neither was there any evidence of the wife acting to her detriment in the required sense

⁹ (1988) 25 J.L.R. 301

¹⁰ [1986] 2 All E. R. 426, 437. See also Lloyds Bank v. Rosset [1990] 1 All E. R. 1111

¹¹ *Ibid* at page 303

¹² *Ibid*

10. Azan v. Azan is of interest for its emphasis on the fact that in these matters the Court was required to look at substance and not merely at form. In that case the bank account from which the asset in question was required was in fact a joint account, but the clear evidence was that only money belonging to the husband was deposited in that account, the wife withdrawing from it only at times when permitted to do so by him. Any asset therefore purchased by the husband from that account came into his sole ownership.
11. In those cases where both spouses made contributions to the acquisition of assets, most usually the matrimonial home, the Court inferred a common intention from the evidence of these contributions together with the general conduct of the parties over a period of time. If the evidence disclosed an intention to own the asset jointly and contributions made by both parties, then the Courts would resort to the principle that equality is equity, resulting in a declaration that the parties own the asset in equal shares.
12. In Josephs v. Josephs¹³, the evidence disclosed that over the course of the marriage, assets were acquired by the joint enterprise of the parties. At one time, when the business was on the verge of bankruptcy, the wife in fact left for the U.S.A. where she worked for nearly two years and from whence she remitted funds from time to time, ultimately giving her husband some US\$4,000.00 to invest in the business upon her return. This case could be described as the "atypical scenario" of a husband and wife working together, as occurs in most marriages. The Court of Appeal affirmed the Resident Magistrate's application of the principle that equality is equity, Carey J. A. observing, "*in the absence of express agreement on the part of the spouses, the Court will presume or impute that having jointly contributed, they intended to share equally*".

¹³ (1985) R. M. C.A. 13/84, judgment Oct. 30, 1985

13. The rule was again applied by the Court of Appeal in Jones v. Jones¹⁴ where Rowe, P. stated:

"The law applicable to a case of this nature is well settled. Where husband and wife purchase property in their joint names, intending that the property should be a continuing provision for them both during their joint lives, then even if their contributions are unequal, the law leans towards the view that the beneficial interest is held in equal shares".

14. Similar to the joint contribution cases are those where there may exist a 'joint fund' between the parties. In Harris v. Harris¹⁵, the Court of Appeal expressly adopted the principles in the leading decision of Jones v. Maynard¹⁶, where it was held that when spouses have a common purse and a pool of their resources for particular purposes, once money goes into the pool, regardless of the source, it is considered joint property. Carey J. A. stated:

"The parties having constituted a common pool from which the funds were provided to pay for the property, which was conveyed in their joint names, the only question which arises is in which proportion each should share. Since the fund from which the resources emanated should not be dissected to ascertain the extent of the respective contribution, it seems to me to follow, nor should any examination be made to see in what shares each holds the property. Put another way the joint property has been used to purchase property for the future enjoyment of both, and the Court in doing what is just between the parties, should declare that they hold the property equally"¹⁷.

It is important to note, however, that this principle was applicable in circumstances where the common pool had been intended or kept for some specific or limited purpose, such as for the purpose of investment.

¹⁴ (1990) 27 J.L.R. 65, 67.

¹⁵ (1982) 19 J.L.R. 319

¹⁶ (1951) 1 All E. R. 802

¹⁷ (1982) 19 J.L.R. 319, at pg. 322.

15. The principles were re-affirmed in the recent Privy Council decision, Green v. Green¹⁸ by Lord Hope of Craighead who delivered the judgment of the Board.

The Presumption of Advancement

16. Problems arose where one spouse's money was used to purchase property which was conveyed into the other's name or into joint names or, where money belonging to one spouse was used to purchase property which was conveyed into the name of one of them only. The traditional method of solving these problems lies in the application of two well-known equitable presumptions. The first is that where one person purchases property and vests the legal estate in the name of another, the owner of the legal estate is presumed to hold the property on a resulting trust for the person who provided the funds. On the other hand, where a husband purchases property and puts it into his wife's name, or into joint names, this conduct is presumed to be intended to be a gift to her by the application of the presumption of advancement. Like all presumptions, this was rebuttable by evidence of intention
17. In Whitter v. Whitter¹⁹, Wright, J.A. stated that he "*was not aware of any authority which has declared that the presumption of advancement is dead ... it is true that today it has lost some of the lustre it bore in Victorian days.*"
18. In Lynch v. Lynch²⁰, however, it was held by the Court of Appeal that the presumption did not apply. In that case the matrimonial home was acquired in circumstances where the husband paid the deposit; there was no issue that he had made all the mortgage payments. The husband said that at the time of the purchase it was never his intention to give his wife an

¹⁸ Appeal No. 4 of 2002, delivered 20 May 2003.

¹⁹ (1989) 26 J.L.R. 185; the principle was also given effect in Harris v. Harris, *supra*.

²⁰ (1991) S.C.C.A. 36/89, Judgment February 4, 1991

interest, but her name was nevertheless registered on the title as a joint tenant. This appears to have happened because the perspective mortgagee had insisted. The Court of Appeal held that in this case, however, the presumption did not apply, because there was evidence to rebut it. The Court accepted that there was evidence of an agreement between husband and wife at the time of the purchase *"that the wife would not share in the equity"*. That agreement was, in the judgment of Carey, J.A., manifested by a blank transfer, which the wife executed. The judgments, in this case emphasize the inapplicability of the presumption of advancement once a contrary intention can be ascertained on the available evidence. Carey J. A. stated thus:

"It seems to me absolutely plain that the doctrine of the presumption of advancement operates only where there is no evidence of intention, and one has to be imputed".

19. Recent decisions from our Courts suggest a whittling away at the presumption.

The Resolution of Matrimonial Property Disputes: The Future

20. While litigation in the courts was making progress, it was the view of many that this was too time consuming a matter with no guarantee of success, given the availability of appeals to higher courts. The other criticism was that the remedies that had been coaxed out of the courts were confined to married women. As Miss Helga Stoeckhart found out to her detriment, in more ways than one, this right of division of property was not readily available to unmarried couples, despite the emerging social realities that showed that a couple does not have to be married to acquire property, with each partner having a vested share based on contributions not necessarily confined to financial input.

21. Accordingly, the Act, which will replace the rules of common law and equity²¹, has been enacted. The practical result of this is that the same procedure will apply to property disputes as between married couples as well as qualified co-habitants. The current law will continue to apply to property disputes involving co-habitants who do not qualify as spouses under the Act.
22. The Act, which as it declares, seeks to make provision for the division of property belonging to spouses and to provide for matters incidental thereto, places each spouse on an equal footing as regards property that they have acquired. But more far reaching has extended this to couples who are not married but who have demonstrated to each other and to the world such a level of commitment to the relationship as merits the protection of the law. The legislation wished to indicate that mere visiting relationships, based mostly on mutual attraction, would not suffice.
23. The first of some of the most significant changes created by the Act are evident from the definitions of spouse and property. Spouse is defined to include:
- a. A single woman who has cohabited²² with a single man as if she were in law his wife for a period of not less than five years;
 - b. A single man²³ who has cohabited with a single woman as if he were in law her husband for a period of not less than five years, immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be.

²¹ Section 4 of the Act states "the provisions of this Act shall have the effect in place of the rules and presumptions of the common law and of equity to the extent that they apply to transactions between spouses in respect of property and, in cases for which provisions is made by this Act, between spouses and each of them, and third parties."

²² In the Act, cohabit means to live together in a conjugal relationship outside of marriage and "cohabitation" shall be construed accordingly. Marriage includes a void marriage as referred to in the Matrimonial Causes Act.

²³ By section 2(2) of the Act, single woman and single man includes widow or widower as the case may be, or a divorcee.

The definition is such that it excludes persons who may be married albeit not to each other and co-habiting.

24. The definition of spouse in the Act is in accordance with a recommendation of the Family Law Committee and a general policy to recognize persons in a longstanding and stable common law union, for the purpose of obtaining certain legal benefits. This definition follows the formulations used in other legislation which recognizes the common law spouse²⁴.
25. Property is given an exceedingly wide definition in the Act; it encompasses not just real and personal property but any property in whatever form to which both spouses or either or them are entitled²⁵.
26. Section 3 of the Act declares that its provisions do not apply after death and every statute or common law principle applies as if the Act had not been enacted. Death of a spouse does not affect anything done under the Act and proceedings under it may continue and/or be completed (including appeals) if either spouse dies; and the court may make any order as if the spouse had not died. This provision implies that death would not affect the validity of anything done pursuant to the Act before the death of a spouse nor would it affect proceedings that had already been commenced pursuant to the Act before the death of the spouse.

Implementation of Proceedings under Act

27. Obviously it is the hope of all, that legal proceedings will not be necessary, but if they are, then by section 5 of the Act, proceedings can be brought to a Judge of the Family Court, in Resident Magistrate's Court in the parish where the property in question is situated, provided the value of the

²⁴ Intestates' Estates and Property Charges Act, section 2; Inheritance (Provision for Family and Dependents) Act, section 2.

²⁵ The definition of property specifically includes any estate or interest in real or personal property, any money, any negotiable instrument, debt, other chose in action or any other right or interest whether in possession or not.

property in dispute is within the monetary limits prescribed by or under the Judicature (Resident Magistrates) Act. In other cases the parties would apply to a Judge of the Supreme Court in Chambers. Either party to the dispute may apply to the Judge of the Family Court or to the Resident Magistrate to have the matter heard in Chambers.

28. Proceedings in the Resident Magistrate's Court would be commenced by summons together with particulars of claim whereas in the Supreme Court the fixed date claim form and affidavit or particulars of claim would be the originating documents.
29. This facility, as well as the hearing of the case by a Judge of the Supreme Court in Chambers, is provided to recognize the nature of applications that arise pursuant to the Act and the desirability of a certain level of privacy that could not have been guaranteed were the matter to be heard in open court.

The Family Home

30. This is a special, specific piece of property, defined in the Act as:

the dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one spouse by a donor who intended that spouse alone to benefit.
31. The legislation states as a rule that, where a relationship breaks-down, due to dissolution of a marriage or termination of cohabitation, the grant of a decree of nullity of marriage or the separation of a husband and wife with no likelihood of reconciliation, each spouse is automatically entitled to one-half share in the family home. By its definition therefore, the family home

specifically excludes a gift by a third party who intended one spouse alone to benefit.

32. Similarly, in one of the few areas where the Act applies after the death of a spouse, the surviving spouse is entitled to one half share in the home, unless the spouses held that family home as joint tenants, in which case, the surviving spouse gets the entirety, by virtue of survivorship²⁶. The intention here is to ensure that when there is a termination of a relationship through death, the surviving spouse is treated in the same manner as a divorced spouse and to provide some economic security for the surviving spouse.
33. Section 6 therefore represents one of the most important changes brought about by the Act because it automatically gives spouses an entitlement to half the family home. This provision overrides provisions in a will and the law relating to intestacy.
34. The Court may, on the application of an interested party, where it finds that in the circumstances of the case, it would be unjust or unreasonable for the surviving spouse to be entitled to one-half of the family home, make such order as it thinks fit²⁷. An interested party includes a spouse or a relevant child²⁸ or any other person who the Court is satisfied has a sufficient interest.
35. In determining an application under section 7, the Court is empowered to make an order as it thinks reasonable taking in account such factors as the Court thinks relevant, including:
- i. that the family home was inherited by one spouse;

²⁶ Section 6(2) of the Act.

²⁷ Section 7 of the Act

²⁸ Defined as a child of both spouses or of one spouse who is accepted as one of the family by the other spouse and includes an adopted child or a child of a void marriage.

- ii. that the family home was already owned by one spouse at the time of the marriage or the beginning of the cohabitation; or
- iii. that the marriage was of short duration²⁹.

36. It is important to note that these are only some of the factors the Court can consider amongst other factors. Other facts which the Court could take into account are monetary contribution to the home, whether at time of purchase or during the marriage or period of cohabitation; non-monetary contribution, improvement in value, upkeep, payment of bills relating to house, etc. To this extent, the authorities before the Act may still be relevant. If the court makes an order pursuant to this section, the family home will presumably fall to be treated as other property owned by spouses and thus falls within the discretionary powers of the Court.

37. Section 8 of the Act addresses situations where the title to the family home is in the name of one spouse and a transaction entered into regarding that family home which requires the consent of both spouses, but the consent is not obtained, as the other spouse now has a statutory right to take such steps as are necessary to protect his or her interest including lodging a caveat. The Court may dispense with the consent if it is satisfied that that consent cannot be obtained because the spouse is mentally incapacitated or that the whereabouts of the spouse is unknown, or the consent is unreasonably withheld, or for any other reason satisfactory to the Court.³⁰ This section is intended to address transactions which may be made to defeat an interest in the family home. Financial institutions and such similar institutions are now statutorily required to ensure that they obtain the consent of both spouses in any transaction involving the family home.

²⁹ What is meant by "short duration" is left to a court's determination.

³⁰ Section 8 (2)

38. If a transaction in relation to the family home is entered into without the consent of both spouses, the 'ignored' spouse may apply to the Court for relief, and the Court may set aside the transaction if the requirement of consent of that spouse had not been previously dispensed with by the Court.
39. It should be noted that if an interest in the family home is acquired by a third party, as a bona fide purchaser for value without notice of the other spouse's interest, the transaction will not be set aside but the ignored spouse is entitled to claim from the proceeds of the transaction the value of his or her share in the family home.
40. Parliament provides tax relief, in section 9 of the Act, when spouses transfer interest in the family home pursuant to the Act. When the interest in the family home is transferred between spouses, then that transaction is exempt from Transfer Tax. A question may however arise for co-habitants; that is as to the question of proof of their co-habitation, sufficient to satisfy the Stamp Commissioner. Would a letter from an attorney together with the transfer documents, utility bills in both name or the fact of children between them suffice? Is a declaration from the Court needed? Perhaps the transfer documents should, in to addition reciting 'transfer for natural love and affection', recite and refer to this section of the Act. It should be noted that Parliament does not extend this exemption to parent and child.

General Property

41. Section 10 of the Act provides for pre and postnuptial and separation agreements as regards ownership and division of property. The section gives parties an option, in that the agreement could speak to the share each spouse will receive consequent on separation, dissolution and termination of co-habitation and/or provide for a calculation and method of determining such share. Such agreements are not new to the practitioners at the private bar, however and more importantly they can now clearly be

enforced under provisions of the Act, where previously they were only enforceable in accordance with ordinary principles of contract law. Additionally, it should be noted that prior to the Act, the court could after a final decree of nullity or dissolution of marriage inquire into ante nuptial or postnuptial settlements and make such orders as it saw fit in relation to the whole or a portion of the property settled either for the benefit of the children of the marriage or the parties themselves³¹.

42. It is mandatory with such agreements that each party obtains legal advice before signing the agreement³². Attorneys must now certify that implications of the agreement have been explained to the person receiving the advice. This is a current practice amongst banks and other lending institutions. The Act therefore imposes a statutory duty on attorneys in addition to any common law duty. Section 10 (4) details certain execution requirements depending on whether documents are signed in or out of Jamaica. Non-compliance with either subsection renders the agreement unenforceable. Agreements of under this provision made by minors³³ are valid and enforceable.

43. The Court now has been given specific powers to:

- i. enquire into agreements and declare whether the agreement should have effect in whole or part³⁴; or
- ii. interfere with agreement where it considers that it would be unjust to enforce it.³⁵ Section 10 (8) lists the factors the Court should have regard in determining this. These are:

1. The provisions of the agreement;

³¹ Section 21 of the Matrimonial Causes Act.

³² Section 10 (3); Even if there is non-compliance with the requirements with 10(3) or (4) the court may uphold the agreement if it is satisfied that non-compliance did not materially prejudice the interests of that party.

³³ Defined in section 10 (12) as a person who is 16+ but below 18.

³⁴ Section 10(7)

³⁵ Section 10 (5) (b)

2. The time that has elapsed since the agreement was made;
3. Whether the agreement is unfair or unreasonable in light of the circumstances existing at the time it was made;
4. Change in circumstances since the agreement was made which now render it unfair or unreasonable (regardless of whether such changes were contemplated by the party or not)
5. Any other relevant matter.

These provisions do not affect the rights of the parties to agree to, acquire or hold property jointly or in common law or with any other person, legally or beneficially. Any property not covered by the agreement will be subject to the provisions of the Act.

44. The Court of Appeal in New Zealand in Snee v. Snee³⁶ considering whether to grant leave to appeal in a matter involving section 21 (10) of the New Zealand Matrimonial Property Act 1976 (a section which mirrors our section 10 (8)), said this of how a court should approach the section:

"...the section does not require the value of assets distributed to each party to be calculated according to their book values; rather the section allows for broad judicial discretion in determining whether the agreement is unjust. Although the concept of reasonableness in s21 (10) (c)³⁷ involves a comparison between the benefits to each party under a challenged agreement and the likely benefits of an award under the Act (see Fisher on Matrimonial Property at 5.82) there is no requirement that the Court confine itself to book values in answering the broader question of whether the settlement was unjust. That would be an incorrect approach. A fair division between husband and wife will ordinarily require consideration of current (usually market) values. And where it is a question of reasonableness of the agreement regard may be had to their assessment of what particular assets were worth to them. The balancing exercise is a matter of discretion and the High Court's decision to have

³⁶ [1999] NZCA 252 (1 November 1999)

³⁷ Section 10 (8) (c) of the Act.

*regard to the value of the agreement to the parties in combination with other factors (such as delay) is not a decision that is properly subject to challenge on a second appeal.*³⁸

45. The Court may on application of either spouse or any financial entity³⁹, (which has stock funds or shares belonging to either party) determine any question which may arise during the subsistence of a marriage or cohabitation in relation to the title or possession of the property⁴⁰. The applications can either be made to Supreme Court or to a Resident Magistrate's Court where either party resides, irrespective of the value of the property. The court can make any order including an order for the sale of the property⁴¹.
46. This section extends to property which was once but is no longer owned by or under the control of the other spouse⁴². The Court, can if it thinks fit, make an order for the payment of a sum, in respect of money or the value of property, where the Court is satisfied that the property was in possession of or controlled by the other spouse, and that spouse has not made appropriate payment or disposition to the other spouse⁴³. Where the Court makes orders under either 11 (2) or (4), it may also make an order for costs and such consequential orders, including as to sale or partition and interim or permanent orders as to possession.
47. Such proceedings would be commenced by way of a fixed date claim form and in the case of a financial entity would take the form of interpleader proceedings.

³⁸ [1999] NZCA 252 (1 November 1999), *ibid* at para 25.

³⁹ The Act gives the right to "any bank, corporation, company, public body or society in which either of the spouses has any stocks funds or shares". Such applicants are treated as stakeholders only (section 11(7)). This provision mirrors section 16 of the MWP Act.

⁴⁰ Section 11

⁴¹ Section 11(2)

⁴² Section 17 of the MWP Act extended section 16 to include applications where the wife claimed that her husband had in his possession or under his control, money or property to which she is beneficially entitled.

⁴³ Section 11(4)

48. Section 12 addresses how the Court should determine the value and share of the property subject of any applications under the Act. The value should be the date of the order made unless the Court decides otherwise. The spouse's share is at the date when the spouses ceased to live together as man and wife, or cohabit or if they have not so ceased, the date of the application. Section 12 (3) represents a codification of the Court's usual practice, that is, the Court shall appoint a valuator where the parties cannot agree.
49. The period time when applications for division of property may be made is limited to twelve (12) months⁴⁴ from dissolution, annulment, separation⁴⁵, termination of cohabitation or such longer period of time as extended by the Court. Section 13 (d) grants spouses a new statutory right in that the applications can, conceivably, be commenced even before the parties separate but only where one spouse is endangering the property or diminishing its value by gross mismanagement or by willful or reckless dissipation of property or earnings.
50. Where a spouse applies for division of property under section 13 of the Act, the Court may make orders dividing either the family home⁴⁶ or any property⁴⁷ belonging to the parties⁴⁸ or where circumstances warrant, both the home and the other property. In making a determination as regards property other than the family home, the Court is obliged to take in account the following factors:

⁴⁴ Section 13

⁴⁵ Where the parties have separated with no reasonable likelihood of reconciliation: Section 13 (1) (c).

⁴⁶ Although, the orders must be in accordance with sections 6 & 7.

⁴⁷ Division of property is subject to section 17(2).

⁴⁸ Section 14 (1) of the Act.

- a. Contribution, financial or otherwise, whether made directly or indirectly to the acquisition, conservation or improvement of any property⁴⁹;
- b. There is no family home;
- c. The duration of the marriage⁵⁰;
- d. The existence of an agreement in respect of ownership and division of property;
- e. Such other fact or circumstance which, in the court's opinion, the justice of the case requires to be taken into account.

51. '*Contribution*' as used above is given a very wide definition in the Act and appears to codify factors, which our Courts have taken in account in decisions prior to the Act. Section 14 (3) (d) enables a Court to consider as contribution, the giving of assistance or support by one spouse to the other whether of a material kind or not including enabling the other spouse to acquire qualifications or aids the other spouse in the carrying on of that spouse's occupation or business.

52. Section 14(3) (e) bodes well for househusbands as contribution can include management of the household and performance of household duties.

53. Contribution may also include:

- a. Caring for any relevant child, any aged or infirm relative of the dependant spouse;
- b. Giving up a higher standard of living than would otherwise have been available;
- c. Payment of money to maintain or increase the value of property;
- d. Performance of work or services in respect of the property;
- e. The provisions of money, including earning an income for the purposes of the marriage or cohabitation;

⁴⁹ This includes property irrespective of whether since making the financial contribution, it has ceased to be property of either or both spouses.

⁵⁰ This is the only common factor the statute states should be taken into account for all property including the family home.

f. The effect of any proposed order upon the earning capacity of either spouse.

54. Section 14 (4)⁵¹ of the Act represents real empowerment to a househusband or a housewife because it categorically equates the value of monetary and non-monetary contribution.

55. By section 15 of the Act the Court has the power, where it thinks fit, to alter the interest of spouses in any property belonging to either spouse (except for the family home) in any proceedings under section 13. Specifically, the Court can order:

- a. a settlement of property in substitution for any interest in the property;
- b. either or both spouses to make, for the benefit of either or both spouses a settlement or transfer of property; or
- c. either or both spouses to make a settlement or transfer for the benefit of a relevant child.

In making any such order the Court must have regard to the effect of the order upon the earning capacity of either spouse, the factors enumerated in Section 14 (2) (in so far as they are relevant)⁵² and any other order made under the Act. However the Act states that a Court cannot make any order unless it is satisfied that it is just and equitable to do so.⁵³

56. Orders made under section 15, can, on an application by a person affected the order, be set aside or substituted on the ground that the order was obtained by fraud, duress, giving of false evidence, or the suppression of material facts. In such applications, the Court should have regard to the protection of the interest of a bona fide purchaser for value without notice.

⁵¹ It states: "For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution."

⁵² See paragraph 50, a - e, above.

⁵³ Section 15 (2)

57. Two decisions of the Court of Appeal of Barbados may prove of assistance in understanding how courts should approve applications made under section 15⁵⁴ of the Act. In March 2002 in Proverbs v. Proverbs⁵⁵, Simmons CJ delivered what he described as an 'anniversary judgment' given that the Barbados Family Law Act was then twenty years old. This was an appeal from a judgment of the High Court where the wife was ordered to transfer her interest in the matrimonial home and the husband ordered to transfer the motorcar to the wife and costs of the proceedings; the court decision centred on these assets. The marriage was of short duration (20 months), there were no children of the union but the husband is the father of two boys from a previous marriage. After setting out the circumstances of their acquisition and considering the relevant English and Australian family law cases, Simmons, CJ said:

"In the determination of a property application under Section 57, the proper approach involves a process of three steps.

(i) The net property of the parties must be identified and valued by the court.

(ii) The respective contributions of the parties within the terms of section 57(3) must next be considered and evaluated.

(iii) The section 53(2)⁵⁶ factors, so far as relevant, should then be considered.

This is the approach approved by the courts in Australia ... Some courts have explained it as a "dual exercise" combining steps 1 and 2. However expressed, a judge must consciously apply his mind to the constituent elements implicit in the "steps". ...

When considering step 2 in the exercise and the assessment of the extent of each party's contributions under section 57, where a wife has primarily performed a role as home-maker and parent, her contribution is not to be taken as confined to the former matrimonial home: it extends at least indirectly to the whole of the assets of the husband.

When considering step 3 in the exercise, in a comparison of the financial resources of the parties, there must be a realistic assessment. Both accrued financial benefits and financial obligations to be met must be weighed.

⁵⁴ Section 57 of the Barbados Family Law Act is the equivalent provision to our section 15.

⁵⁵ Civil Appeal No. 7 of 2001, decided May 28 2002

⁵⁶ This provision is similar to our section 14 (3).

The section 53(2) factors come into play in situations where there is a disparity of resources, including a disparity in future earning capacity, or there are special needs on the part of one party such as the care and housing of the children. An adjustment is made because one has greater needs and the other has stronger means.

*...
The respective values of the contributions made by the parties must depend entirely on the facts of the case. ...*

This is not a case where the wife was exclusively a home-maker doing only domestic chores daily in the home. She was a working wife whose small salary went towards the household expenses and a stepmother who assisted with the rearing and transportation of the children. Fully conscious that we must not undervalue the home-maker role, we accept that the wife made an important contribution during the short duration of the marriage.

The key issue in this appeal is how to measure the quantum of the wife's indirect contribution in a marriage of short duration where she will no longer have responsibility for any children; that is to say, trying to quantify contributions which, by their very nature, are non-financial. This must necessarily be a value judgment. ...

At the end of the day the overriding principle is to be found in section 57(2) in that the order made must be just and equitable as between the parties."

58. **Errol Browne v. Muriel Griffith**⁵⁷ a decision of the Court of Appeal of Barbados, involved a dispute between two parties over two pieces of land, items of furniture and household effects and money. The parties had lived together as man and wife for approximately ten years and had co-habited in a property owned by Browne. Griffith filed the application seeking declaratory relief, *inter alia*, as regards her interest in one property and for the return of furniture. Both filed two affidavits in support of their respective positions; one of Browne's was by the housekeeper. There were a number of issues on which both made opposing claims. With no cross-examination, the court ruled in favour of Griffith. Browne appealed contending essentially that the trial judge improperly exercised his discretion and erred in law in that he failed to have sufficient regard of the

⁵⁷ Civil Appeal No. 23 of 1996, decided April 20 2001

evidence. Williams JA allowed the appeal; he stated "...I am at a loss to understand how the trial judge could come to a balanced and reasoned decision without the benefit of cross-examination of any of the deponents. ... the mystery remains as to how he decided in favour of one side or the other on the important facts that were in dispute." Essentially, the Court felt strongly that given the issues involved detailed particulars of claim and/or discovery was called for.

59. Section 17 enumerates provisions relating to property and creditors. In our opinion, the intention behind section 17(1)(a) was to provide that in cases where a spouse owed debts to secured or unsecured creditors, the creditors would have the same rights against the spouse and property belonging to that spouse as if the Act was not enacted. The provision however appears to be contradictory because the opening words to section 17(1) make the provision subject to the provisions of the Act. If subsection (1)(a) is to be subject to the provisions of the Act, then why are creditors in the same subsection given rights against a spouse indebted to him "as if the Act was not enacted"? Section 17(1)(a) requires more scrutiny and analysis, but in our opinion may need to be amended to reflect the true intention of Parliament.
60. The provision also addresses property that would have fallen to be administered by the Trustee in Bankruptcy and specifies how the value of property that may be divided between spouses will be determined where secured or unsecured debts (other than personal debts⁵⁸ or debts secured wholly by the property) exist. It also, declares what orders a Court may make where on a division of property, any secured or unsecured debt of one spouse has been paid out of the property owned by both spouses.
61. Section 18 makes court orders pursuant to the Act subject to any pre-existing mortgage, security, charge or encumbrance affecting the property.

⁵⁸ Personal debt is defined in section 17 (4).

Section 19 voids agreements, dispositions or transactions between spouses in relation to the family home or other property intended to defeat creditors. Where proceedings have been instituted under the Act, section 20, prohibits the disposal (by sale, charge or otherwise) of the property without leave from the court or the written consent of the spouse who instituted them. Contravention of this provision amounts to an offence punishable by a fine not exceeding \$1 million.

62. Section 21 gives spouses a statutory right to obtain an injunction where the Court is satisfied that property (the subject matter of proceedings) is about to be disposed in an effort to defeat the claim. Then, on application the court may restrain the attempted disposition or order that the proceeds are to be paid into court. The Court is empowered to set aside any disposition of property where it is satisfied that it was made to defeat the claims⁵⁹. The court can order that the person to whom the disposition was made (other than a bona fide purchaser for value without notice) or his personal representative, transfer all or part of that property as directed by the court or pay the proceeds into court. If the person is not a bona fide purchaser for value without notice, then they must transfer that interest or pay the proceeds as the court directs.
63. Section 23 enumerates a wide variety of orders which the Court can make without prejudice to other orders made under the previous provisions. The provision makes clear that the court could order lump sum payments of money or payments by installments, with or without security, in a manner the court thinks fit. The court can grant a spouse the right to occupy the family home or any other premises forming part of the property belonging to either or both spouses, and this may be done to the exclusion of the other spouse. Such an order would be enforceable against the personal representative of the spouse against whom the order has been made.

⁵⁹ Section 22

64. Proceedings commenced prior to the Act coming into force, are not affected by the commencement of the Act. Those proceedings continue and are enforced as they would be prior to the Act.
65. The final provision of the Act, section 25, addresses the amendments to be made to certain Acts, which are set out in the Appendix to the Act and in particular, states that sections 16 and 17 of the MWP Act are repealed.

Costs

66. As regards the question of costs, in the earlier decision, Harris v. Harris, having ordered a sale of the property, the trial judge made an order for the payment of costs from the proceeds of sale. The Court of Appeal held that this was "an unusual order" and ordered that the wife should have her costs. Campbell J. A. observed as follows:

"That learned trial judge regrettably has not given any reason why he has deprived the successful applicant before him of having her costs paid by the unsuccessful respondent. In the absence of special circumstances to be stated by the trial judge a successful litigant is entitled ex debito justitiae to ... costs".

67. In Jones v. Jones, the husband was the Applicant and Panton J. made an order that the wife should pay the costs, as he thought that her attitude was unreasonable. The Court of Appeal set aside this Order and made no order as to the costs of the appeal.
68. Unlike similar acts in other jurisdictions, the Act does not address the question of costs on applications made pursuant to its provisions (except for orders made under section 13). Consequently, reference may have to be made to the pre-Act authorities.

Conclusion

69. The Act brings about sweeping changes to this area of the law and we may have to wait to see how our Courts interpret its provisions to fully determine its positive and negative impact. Undoubtedly, however, the Act will generate a great deal of work for attorneys, by way of pre-nuptial and ante-nuptial agreements as well as advice in conveyancing matters (for both purchase and vendor, and lending institutions). The Act also places on us a clear duty to properly and carefully advise our clients. Clients should be requested to critically examine their assets to determine their extent and the potential loss of these assets to a spouse. This is especially important for pre-nuptial agreements, where the attorney may encounter resistance arising from the pre-marital euphoria, which is likely to exist. The provisions extending jurisdiction to the Resident Magistrates Courts will afford persons residing outside of Kingston an option which can save legal costs. We will therefore have to wait to see how the provisions of the Act will adjust to today's society.

PROBLEMS WITH THE PROPERTY (RIGHTS OF SPOUSES) ACT, 2004

In what circumstances will a personal representative be able to make a claim to an entitlement which had accrued?

70. Some clarification would be welcome as to what section 3 means when it says that the provisions of the Act will not apply after the death of either spouse:

3. (1) Except as otherwise provided in this Act and subject to subsections (2) and (3) of this section and section 6, the provisions of this Act shall not apply after the death of either spouse and every enactment and rule of law or of

equity shall continue to operate and apply in such case as if this Act had not been enacted.

(2) The death of either spouse shall not affect the validity or effect of anything done or suffered in pursuance of the provisions of this Act.

(3) If, while any proceedings under this Act are pending one of the spouses dies, the proceedings may be continued and be completed; and any appeal may be heard and determined and the Court may make such order as it thinks fit in the circumstances of the case as if the spouse had not died.

71. Reading sections 3(1) and 3(3) together it seems that a personal representative should not be able to bring a fresh action once a spouse has died. Reading section 3 only it seems to mean that if the spouse did not make a claim to an entitlement which had arisen while they were alive, then their personal representative (or anyone else) cannot make the claim after they are dead. That would in my opinion be the desired position. However section 3 is subject to section 6¹. Section 6(2)² recognises death as a circumstance that would cause a half interest to arise and which would therefore appear to allow a personal representative to make the claim.
72. The giving of a half share in the Family Home to the surviving spouse upon the death of the other spouse, as is stipulated in section 6(2), could lead to injustices.
73. An example of the injustice is the situation where H & W are married, and live in a house in W's name only which W purchased during (not prior to)³ the marriage. H never had an entitlement to a half interest in this Family

¹ Section 6 (1) states: "Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home (a) On the grant of a decree of dissolution of a marriage or the termination of cohabitation; (b) On the grant of a decree of nullity of marriage; (2) (c) Where a husband and wife have separated and there is no likelihood of reconciliation."

² Section 6 (2) states: "Subject to section 10, where the termination of marriage or cohabitation is caused by the death of one spouse, the family home shall, if it is not held by both spouses as joint tenants, be deemed to have been so held during the period of the marriage or cohabitation, and accordingly the title to the family home shall pass to the surviving spouse."

³ Homes owned prior to the marriage or beginning of cohabitation are expressly recognized as an example where it may not be appropriate to have a 50-50 interest, see section 7(1)(b).

Home during his life because none of the circumstances listed in section 6(1) arose. However on his death, according to section 6(2), W now has a half interest in the Family Home. Would W who previously was the sole registered proprietor of her house, on the death of H now own a half interest in her house? The other half will therefore go to his estate / could be pursued by his creditors? If H did not leave a will giving his half interest back to W, the result could be that W now owns her home with strangers to her? Was this the intention of Parliament? Does W now have to undertake the expense of an application under section 7 to vary the equal share rule?

74. Section 13(2) provides for a one year limitation period within which one can apply for a division of property where the circumstances in section 6 and one other circumstance arise. The half interest having arisen on the death of H by virtue of section 6(2), if the estate of H (the deceased spouse) does not make a claim within a year, does the entitlement cease thereafter and W would be the sole legal and beneficial owner, and once again her registered title would mean what it says?

The Ambit of the One Year Limitation Period

75. There is also uncertainty regarding what period will comprise the limitation period to claim an interest in the Family Home. Under section 6(1) there are several starting points for the entitlement to a half interest in the Family Home. Depending on which one you use, this will result in the 12 month limitation period referred to in section 13(2) being capable of having more than one result. In section 13(2) itself the various starting points are referred to also.
76. For example under section 6(1)(c) or section 13(1)(c) if a husband and wife have separated and there is no likelihood of reconciliation the 12 months

would start to run. If 5 years later they obtain a decree absolute, it is arguable than under section 6(1)(a) or section 13(1)(a) the 12 months starts to run then.

Lodging A Caveat To Protect Your Interest

77. Section 8 allows a spouse to lodge a caveat to protect their interest. It would be very useful if it was clarified as to whether the interest being referred to is a contingent interest or whether it means an interest or entitlement which has arisen because one of the things in section 6(1) (a), (b) or (c) has arisen. Barring clarification it would have to be only if one of the things in section 6(1) had occurred because prior to that you would not yet have an entitlement capable of being caveated because to lodge a caveat normally the interest you are protecting must exist.
78. It is not mandatory that persons who have an interest under section 6, but whose name is not on the title, lodge a caveat. In my opinion it should be mandatory in light of section 8(1)(b)⁴ which states that any transaction concerning the Family Home requires the consent of both spouses. In fact, in light of section 8(1)(b) which states that any transaction concerning the Family Home requires the consent of both spouses, parliament should consider whether once you are a spouse whose name is not on the title to the Family Home, whether you should be required to lodge a caveat if your interest is to be recognized.
79. Clarification as to the meaning of section 8(1)(b) would also be useful. In particular, is consent only required if the entitlement under section 6(1) has arisen or is it required once there is a spouse?

⁴ Section 8 (1) states: "Where -the title to a family home is in -the name of one spouse only then, subject to the provisions of this Act - (a) the other spouse may take such steps as may be necessary to protect his or her interest including the lodging of a caveat pursuant to section 139 of the Registration of Titles Act; and (b) any transaction concerning such home shall require the consent of both spouses.

80. Unless it is made mandatory this optional caveat would have significantly weakened the reliance that can be placed on a registered title/searches for interests carried out at the Office of the Registrar of Titles.
81. If it is mandatory some persons will not be able to pay the usual fees payable for the registration of a caveat. It would therefore be good if the fee payable to protect your interest under this Act could attract a nominal fee.
82. By making it mandatory lending institutions would be able to rely on a caveat check instead of having to make enquiries at the home once a house is offered as security. Lending institutions may no longer want to accept homes as security if the due diligence becomes unreasonable.

Agreements In Relation To Property For Persons Who Are Already Living Together But Who Are Not Yet Spouses Within The Meaning Of The Act

83. Section 10(1)⁵ of the Act has inadvertently omitted from its definition of the persons who can enter into the Agreements, persons who are already living together, but who are not yet spouses within the meaning of the Act.

Lenders are exposed

Section 18

(1) Subject to the provisions of sections 21 and 22, the rights conferred on any spouse by an order made under this Act shall be subject to the rights of any person entitled to the benefit of any mortgage, security, charge or encumbrance affecting any property in respect of which the order is made if such mortgage, security, charge or encumbrance was registered before the order was made

⁵ Section 10 (1) states: "Subject to section 19—(a) spouses or two persons in contemplation of their marriage to each other or of cohabiting may, for the purpose of contracting out of the provisions of this Act, make such agreement with respect to the ownership and division of their property (including future property) as they think fit; (b) spouses may, for the purpose of settling any differences that have arisen between them concerning property owned by either or both of them, make such agreement with respect to the ownership and division of that property as they think fit."

or if the rights of that person arose under an instrument executed before the date of the making of the order.

(2) Notwithstanding anything contained in any enactment, no money payable under any mortgage, security, charge or encumbrance referred to in subsection (1) shall be called in or become due by reason of the making of an order under this Act, not being an order directing the sale of any property.

84. Section 18 will create problems for lenders. Usually once your mortgage or charge is registered you proceed to disburse secure in the knowledge that if there is a default you have the option of relying on the security. There is no way of knowing when you register your mortgage if an order has already been made prior to the date the mortgage was signed or prior to the date of registration. Our Supreme Court Registry is not at a stage of development where speedy and accurate searches of this nature could be made. Further, applications can be made to the RM Courts (section 11) and the same problem would arise in those Courts. If an order has been made then the lender's security will be in jeopardy, even if they had made enquiries at the house and not discovered the existence of the spouse.
85. There should be some central place where you have to register these orders so that lenders can search to see if any order has been made and can get a certificate which they can rely on that none has been made / registered. Lenders will need a mechanism which allows them to be certain that there is no order.
86. The onus should be on the person who gets a court order in their favour to register it as a miscellaneous instrument.
87. Section 18(2) is a mystery. Does that mean that if a lender lent money to H whose name is on the title, using it as security and then discovers that W has obtained an order recognising her as having an interest in the security, they cannot call in the loan for that reason? If that is so, then is that on the basis that the lender is ahead of her in terms of having an interest in any proceeds

of sale? That is fine if W's interest came about after the lender's, but if it came about prior to the mortgage being signed the lender is exposed and should be able to call the loan.

Give guidelines as to what enquiries are sufficient

88. Where section 8(1)(b) is applicable, everyone doing a transaction with someone who owns a Family Home is exposed if the consent of both spouses is not obtained.
89. Section 8(3)(b) protects a bona fide purchaser for value who did not know of the other spouse's interest. It would have been useful if there was some guidance on what level of enquiries will be considered adequate. For example can the purchaser simply ask the person who is selling or their attorney, or do they have to go to the house and make their own enquiries.
90. Under section 18 the lender is exposed if an order was made prior to the execution of the mortgage.
91. All this is against the background of our migration culture where a spouse may be working abroad for 6 months out of the year and here only 6 months. Or working as a live in helper or gardener for a week two weeks on a stretch away from the Family Home.
92. It would be useful if the Act were to set out guidelines as to what enquiries by a purchaser or a lender will be considered adequate when one makes enquires about the occupiers of a house so that there can be certainty in these transactions.

An Injunction Without Requiring An Undertaking As To Damages

93. The effect of section 20⁶ is that once a claim is made touching and concerning a particular property, even if it is registered in your name only and you owned it before your marriage/relationship, you cannot deal with the property by way of sale, charge or gift without the leave of the Court or the consent in writing of the spouse bringing the proceedings. This is indeed a most draconian provision which does not even expressly say that it applies once you have been served. A breach of this is a criminal offence carrying a fine of \$1 M or imprisonment not exceeding 12 months or both.

Polygamous Relationships Among Common Law Spouses

94. Since the Act is trying to deal with the cultural realities of Jamaica, it would have been very useful if some guidance had been given as to how polygamous relationships among common law spouses (i.e. who are not lawfully married to anyone) should be treated. How will the Court deal with it when a spouse makes a claim under the Act and it is discovered for example that the other spouse was not really working far away, but was living half of the week at another residence? How will the Court treat the 2 spouses of the same sex who may or may not have known of each other's existence? In those circumstances if the man owned in his name only both the houses where the female spouses each live, can there be 2 Family Homes. If it is that these spouses will have no rights under the Act but will have to be guided by other law in relation to property then the Act should say so expressly.

⁶ Section 20 states: "(1) No person shall, where proceedings are instituted pursuant to this Act, sell, charge or otherwise dispose of any property to which the proceedings relate without the leave of the Court or the consent in writing of the spouse by whom the proceedings are brought. (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment."

The Inheritance (Provisions For Family And Dependants) Act

95. The Inheritance (Provisions For Family And Dependants) Act allows certain persons to make an application for financial provision from a deceased's person's estate where either no provision has been made for them or where the provision made is inadequate. It would have been useful if section 13 of the PRPA had indicated if the "termination of cohabitation" as used there includes death. One must assume that it does. Section 6 of that Act when dealing with the Family Home expressly referred to death as one of the terminating events. If there is an application under the Inheritance (Provision For Family And Dependants) Act, simultaneously with an application for Division of Property under section 13 of the PRPA, the Court could be faced with a situation where there is a competition over the same assets and it may be wise to hear the applications together. I suggest that either the Act should say what will happen in those cases or Practice Directions should be issued to deal with this and with regard to the procedure. If a spouse is allowed to bring a PRPA application in the context of divorce proceedings, it would be procedurally awkward to entertain an application at the same time from a 3rd party for example under the Inheritance (Provisions For Family And Dependants) Act.

The presumption of advancement

96. The Act is silent on the presumption of advancement. It was already in a tenuous position before the Act. Has an opportunity been missed to abolish it or to state clearly what is our law on this presumption?

Consolidation of the family legislation

97. On another wider issue, our family legislation is becoming unwieldy in terms of it being scattered in several Acts and it would be a good idea if it could be consolidated. A Practitioner of Family Law has to bear in mind and consider:

- a. The Matrimonial Causes Act
- b. The Married Women's Property Act
- c. The Maintenance Act
- d. The Status of The Children's Act
- e. The Property (Rights Of Spouses) Act
- f. The Inheritance (Provisions For Family And Dependants) Act
- g. The Children (Guardianship And Custody) Act
- h. The Children (Adoption Of) Act
- i. The Wills Act and the Intestates Estates' and Property Charges Act

98. It would be very useful if the majority of this legislation (especially the first 8 listed) were consolidated into one Act dealing with all matters related to the family and the distribution of property within the family. Any inconsistencies or anomalies would be more readily obvious and less time would be spent considering which Act to make an application under.

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