

LECTURE AGENDA

Prepared by
Attorney At Law & Legal director of The NDF
Alice Daniel

WOMEN IN DVORCE AND ITS IMPACT

When we come to speak of Divorce (Legal dissolution of marriage) can only be dissolved by a Court of law; The High Court – Judge.

In Trinidad the Act that governs this legal process is known as the Matrimonial Proceedings and Property Act. Chapter 45:51 of our laws shortened to (M.P.P.A.). There is also the Muslim marriage and Divorce Act where by specified Muslim council has the jurisdiction to grant a Divorce.

Other related Acts

1. Married persons Act
2. Muslim marriage and divorce Act
3. The maintenance orders (facilities for enforcement) Act 2000
4. Family law (Guardianship of minors, Domicile and Maintenance) Act of 1981
5. Domestic Violence Act
6. Attachment of earnings Act

(A) CAPACITY FOR DIVORCE (what makes you eligible)

1. You must be married

Nature of marriage

The old English case of Hyde vs Hyde defines marriage as “The voluntary union for life of one man and one woman to the exclusion of all others”

Four conditions for marriage – recognized

1. Consent by both parties and must be voluntary
2. For life – expected permanence can only be terminated by death or order of the Supreme Court
3. Union must be heterosexual
4. Monogamous

(B) THE ACT OF MARRIAGE CREATES

1. A contract
2. A status

Marriage is first and foremost a legally binding contract – creates rights and obligations.

But a specialized type of contract:

1. Needs special formalities (depending on the country performed in) to be created
2. Creates special rights and obligations/conditions that are set out and fixed by law and not private agreement.
3. It binds all the world (rights and obligations)

Like a contract it can therefore be determined and can be void or voidable. But need a declaration to be pronounced by a Court of Law. To say it is void

- Decree of nullity or otherwise
- Decree Absolute to end it.

(C)

If you performed the marriage but in its formation certain conditions pertinent to its creation were not met, your marriage may be void or voidable.

Section 13 of the M.P.P.A. (clearly sets out how this can occur)

VOID

1. Not valid under Marriage Act, Hindu marriage Act, Muslim Marriage act.
2. Parties are within prohibited degrees of relationship eg. (brother marriage to sister)
3. Either party is under the age at which he/she is capable of contracting marriage. (Under Marriage Act – 18 years) Hindu Marriage Act 18 years male; 14years female; Muslim Marriage Act 16th years male; 12years female (or with consent of parental authority)

4. At time of marriage either party was already lawfully married.
5. Parties are not respectively male and female

Void means it never existed from the inception

Void abinitio – but still need an official legal stamp on its determination and so under the Act one can apply for an order of Decree of nullity – the same will declare the marriage void.

(D) Voidable

Marriage can be made void but by exercise of choice, Section 13 (2) of the M.P.P.A. say a marriage is voidable when:

1. Marriage cannot be consummated – due to incapacity of either party to consummate same.
2. Not consummated due to wilful refusal of the Respondent to do so.
3. That either party did not validly consent to it by duress, mistake, unsoundness of mind or otherwise.
4. Although capable of giving consent at time of marriage either party was suffering (whether continuously or intermittently) from mental disorder to such an extent as to be unfitted for marriage.
5. Respondent – at marriage – was suffering from venereal disease in a communicable form
6. At the time of marriage Respondent was pregnant by some other person other than the Petitioner.

(E)

The Court will not grant Divorce in case of voidable marriage whether before or after commencement of Act.

If the Respondent satisfies the Court that

1. The Petitioner with knowledge – failed to exercise opportunity to avoid the marriage and so conducted his/herself towards the Respondent as to lead the Respondent to reasonably believe that a nullity would not be sought.
2. That it would be unjust to the Respondent to grant the decree and generally – Petitioner was ignorant of fact in regard to (5) and (6).

(F)

In case of a voidable marriage – the marriage shall be treated as if it existed up until time of decree.

In case of children; treated at date of decree as if it had been dissolved and not annulled thus marriage can be determined by divorce –dissolution of marriage; Decree of nullity in case where contract is void or voidable.

DIVORCÉ

Although the contract has been perfectly formed, met all requirements and before all the world is legally binding, upon the petition of either party a marriage can be dissolved.

First condition

- (a) You must be married for one year – use to be three years – this is called under the Act; the specified period.
- (b) Exception
A court may grant Decree Nisi for marriage under one year but the party applying must establish
 1. A case of exceptional hardship to the Petitioner
 2. A case of exceptional depravity on the part of the Respondent

Court must give consideration to any child of family and to possibility of reconciliation during specified period.

The Court of course has the power even after granting the Decree Nisi to disallow granting of the Decree Absolute where petitioner was found subsequently to have made misrepresentation or concealment of the truth of the case or dismiss petition prior to Decree.

This would not preclude a Petitioner from returning at the required time and on the same facts – can obtain Divorce.

GROUND

- (1) Under the M.P.P.A. (Section 3) establishes only one ground for Divorce that is – The marriage has broken down irretrievably

- (2) That ground for Divorce must be supported by certain facts as set out in (Section 4) of the Act and the Court must be satisfied accordingly.
 - (a) The Respondent has committed adultery and the Respondent finds it intolerable to live with the Respondent.
 - (b) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
 - (c) The Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.
 - (d) That the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to a decree being granted.
 - (e) That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.
- (3) When the petition is presented the Court shall inquire as far as is reasonable into the facts alleged by the Petitioner and by the Respondent.
- (4) It is to be noted here that this is Civil Law not criminal – therefore the proof on evidence is discerned on a balance of probabilities – What is probable and not beyond the shadow of a doubt.
- (5) The Court must be satisfied by the evidence you state in your petition that the fact upon which you rely is fully supported and the Court would find accordingly that the Marriage has broken down irretrievably. The burden of proof always lies in the spouse making the allegation.

- (6) Please note that section 8 and 9 of the M.P.P.A. demands how supportive evidence must sincerely support the fact upon which you seek to be divorced accordingly.
 - (a) Possibilities of reconciliation must have been at least discussed and certification for same has to be given by your attorney.
 - (b) More importantly it is not sufficient for a Petitioner to rely upon an event that happened more than six months before coming for Divorce. Evidence must be relatively fresh concept being if you lived with it for so long it could not be that unbearable (cannot reasonably be expected to live with the Respondent)

FACTS

Adultery

- (1) Must produce evidence of fact (hard proof) balance of probability but success lies on clarity of evidence.
- (2) Gift of Proof
 - (a) Admission of Respondent
 - (b) Existence of a child
 - (c) Caught in the act
 - (d) Inference – from circumstances (balance of probability)
 - (e) Evidence that can be well corroborated
- (3) Before going on let me state here that at present there are two procedural systems for Divorce in T & T.
 - (a) Old rules – matrimonial causes rules
 - (b) New rules – Family proceedings rules 1998
- (4) You now know there is a Family Court; run according to the new proceedings

- (5) But the old rules; still pertain in the High Court of San Fernando and Tobago.
- (6) We will go into some comparison of the two systems later; put note that under the new system; detailed enquiry into the evidence and facts have been somewhat curtailed.
- (7) In case of adultery under the old rules the need to join a co-respondent where the husband is the petitioner and a second Respondent where the wife is a Petitioner is clear.

In case of the wife being the Petitioner and naming a Respondent she must seek leave of the Court.

In the new rules to join a third party an application has to be made to the Court to seek leave.

UNREASONABLE BEHAVIOUR

- (1) Court has to decide the single question whether the Respondent has so misbehaved that it is unreasonable to expect the wife to live with him/her as the case may be.
- (2) Therefore it is important to make findings of fact as to the impact of that conduct on the Petitioner.

The test of determination is objective; it is the effect or reasonably apprehended effect of the Respondent's behaviour that is considered.

- (3) As any conduct; active or passive constitutes behaviour. Behaviour not confined to just the Petitioner; it is what affects the marriage – Respondent's behaviour to other family members, children etc.

- (a) Behaviour is action or conduct by one which affects the other and is done against the will of the spouse making the complaint.
- (b) For eg.; the disclosure to the Petitioner after the marriage of a fact which ought reasonably to have been disclosed to the Petitioner prior to the marriage. Eg. (existing child born during engagement)
- (c) The accumulation of minor acts; which would reasonably work to break down a relationship.
- (d) Under unreasonable behaviour Court has regard to whole history of the marriage.

Even if over six months; still cite same and build up on circumstances.

- (4) It is important to note that “under special procedures, new rules” – once the case is undefended. It is entirely a paper procedure, and it precludes any real “inquiry into the facts”. Of course burden of proof lies with he who alleges once you are called upon to do so.
- (5) Also note that once you have not pleaded an act in your petition or cross petition you can not lead evidence on same, so be well advised to tell all in your instructions to your attorney. However if the Court in its discretion allows you can have your petition amended accordingly.
- (6) A restraining order under the Domestic Violence Act is good proof of unreasonable behaviour. (see page on Domestic violence)
- (7) Adultery; under this head goes to (improper association with women) Also considered unreasonable conduct for (Respondent to refuse sexual intercourse) or to insist on sexual practices that the Respondent knows is unfavourable to the Petitioner.

DESERTION (still quite debatable as to its meaning)

1. Desertion is proved by satisfying the Court that the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.
2. Desertion may be simple or constructive.
3. The desertion must have taken place without cause.
4. Desertion – meaning; the separation of one spouse from the other, with the intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse.

Desertion is not just the withdrawal from a place but rather from a state of things (from the “Raydon’s on Divorce”) recognition and discharge of the common obligations of the married state.

5. Time – continuous period of two years; counting from the day after the day of first leaving.
6. Section 8 (5) (M.P.P.A.) says “no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other.

Said period of resumed living shall not count as part of the period of desertion; total time must be two years even if broken up by intermitten periods of resumed living.

DOCTRINE OF CONSTRUCTIVE DESERTION

1. Desertion is not to be tested by merely ascertaining which party left the matrimonial home. If one spouse so conducts him/herself as to be responsible for driving the other out of the marriage the spouse who so behaves is guilty of constructive desertion. Case of “Lang vs Lang” – if spouse had no wish in fact to disrupt married life, yet he or she is presumed to intend the natural consequence of his or her act, so that if one spouse’s conduct is so bad it forces the other to leave the marriage, the former is guilty of constructive desertion.
2. The thing about desertion generally is there must be proof of a direct intention to permanently leave, end, stay away from cohabitational existence (general desire to bring matrimonial consortium to an end)

(a) With simple desertion there is abandonment

(b) With constructive desertion there is expulsive conduct

In common – for the offence to succeed there must be two elements present on the side of the deserting spouse.

(1) Factum - Physical separation

(2) Animus deserendi - The intention to bring cohabitation permanently to an end.

3. The burden of proof is on the Petitioner to show that the desertion without cause subsisted throughout the statutory period (test balance of probability)

Eg. “This husband says to wife, I am leaving this marriage I will not be returning. I do not want you as my wife” (that’s intention) and he leaves for a continuous period of over two years and does not return – you can bring this fact to the Court as proof of the ground of the breakdown of your marriage by desertion.

You must plead this specifically.

Eg. “Husband says to wife; leave this house, if you don’t leave I will kill you and don’t ever come back. I don’t want you and the wife in fear for her person leaves and does not return, that is desertion, on the part of the husband, constructive desertion”

4. Therefore if a state of separation defacto exists during the statutory period the question is whether or not that separation is attributable to the conduct of the Respondent.

Defences to desertion

5. No desertion; if there is agreement to separate (mention Deed of arrangement/separation) but spouse must have choice in matter to make it consensual.

Eg. Case of Phair vs Phair (England)

Wife told husband to get out; husband had always wanted to leave because he felt that they were not compatible and he left. Court of Appeal held that the wife had constructively deserted the husband. It could not be said that separation in that instant was consented as Husband was never consulted by wife he was just asked to go and given no option.

6. Where parties live under same roof
Must show that parties lived in two separate households under the same roof (hard proof) normally must be physical desertion factum) must be specially proven.
7. Desertion is not indifference, refusal of sexual intercourse although – Accumulation of those things may be proof of intention to bring about separation. Being in mental hospital – but if left marriage before breakdown Court may treat time of insanity as continuing desertion.
8. Just cause good defence
 - (1) because of spouses conduct
 - (2) because of reasonable belief of adultery

DIVORCE BY CONSENT (Living apart for two years)

Qualification here is

1. Must be for a continuous period of two years and section 8, section 5 of the M.P.P.A. also applies
2. Must be consent – expressly written can attached to Petition.

No need to plead any facts except must make clear statement as to date of separation, under section 10 of M.P.P.A. – Decree Nisi can be rescinded if Respondent misled and therefore consent is dubious or not given.

Spouse could change mind and withdraw consent, say they did not give it with understanding of same etc. so if uncertain go with unreasonable behaviour.

DIVORCE – 5 YEARS

Qualification here is

1. Must have been 5 years continuous period
2. No need to plead any facts except must make clear date of Separation.
3. In the case of Divorce based on separation of more than 5 years (Section 9) of the Act allows the Court not to grant a Divorce and
4. To consider (1) where Respondent brings a good case that the Divorce will result in great hardship or grave financial difficulty and it would in all circumstances be wrong to dissolve the marriage.

5. The Court will look at all circumstances of the particular case, make its judgement of course on a balance of probability and in its discretion just to do so.
6. Hardship includes the loss of the chance of acquiring any benefit which the Respondent might acquire if the marriage were not resolved.

Case in point eg. Will left by a deceased, lets say mother-in-law (not yet fully probated) leaving endowment, if wife remains wife of husband or so long as she is married to husband.

JUDICIAL SEPARATION

Apart from nullity and divorce M.P.P.A. allows the Court to grant orders for Judicial separation. Section 4 of the M.P.P.A. applies to same; short of ground. Under Section 25 of the Family Law Act the Magisterial Court can make an order for cessation of cohabitation which has legal effect of judicial separation, it means no longer necessary to cohabit and can be used as good evidence on Divorce proceedings.

PRESUMPTION OF DEATH

- (1) Section 16 of M.P.P.A. allows Divorce/Dissolution of marriage on the ground of presumption of death.

Must be absent over seven years or more; until the contrary is proven; evidence that other party is dead.
- (2) Normally must be domiciled in Trinidad an Tobago if petition presented by wife; must be resident in Trinidad and Tobago and has been so resident for three years immediately preceding commencement of proceedings.

- (3) Decree Nisi is given; not to be made absolute within three months of such time as Court may fix.

FORM

- (1) Divorce; by way of petition which is defended by an answer or by another petition – cross petition. Petition must layout case – ground and upon what fact you rely – marriage certificate attached and certificate of reconciliation. Supporting evidence must be specifically pleaded.
- (2) Answer – mention Richards vs Richards
They are matrimonial causes Rules – rules with guide how the process should take place.

A petition must be served on the other party or parties; served by Marshall of the Court – sometimes assisted by Petitioner who points out Respondent. Application for substitution where person cannot be found or is not available for service or dispensation of service in some cases which the Court is hard press to do, service by advertisement or on some close relative of Respondent.

- (3) All ancillary relief, property settlement, custody claims must be applied for on face of Petition, if not a separate application for leave of Court has to be done.
- (4) Must be present for your Divorce generally but with good reason, Divorce can be done in absentia by way of application to the Court where evidence on Petition is presented via affidavit.
- (5) Under the old rules; Divorce are done in open Court. Lawyers dressed up in robes. Under the new procedural rules, Divorces are done in camera by dint of set up of the Court room.
- (6) The Order obtained firstly is called the Decree Nisi (Nisi in Latin means “unless”) Decree – order of judgement of

Court. Six weeks subject to Section 47 1(B) Decree Absolute – (Latin – complete, perfect, unconditional)

CHILDREN

Section 47(1)B of M.P.P.A. states:

Court shall not make absolute a decree of divorce or of nullity of marriage or of judicial separation unless the Court, by order, has declared it is satisfied.

- (7) No children to whom section applies
- (8) That the only children who are or may be children of the family to whom section applies are the children named in the order and that
 - a. Arrangements for the welfare of every child so named have been made and are either satisfying or the best that can be devised in the circumstances.
 - b. It is impracticable for the parties before the Court to make any such arrangements

OR

- c. There are circumstances making it desirable that the decree should be made absolute without delay notwithstanding that there are or may be children of the family to whom the section applies but the Court is unable to make a declaration under section 1(b).

Declaration of Satisfaction

Under 1(c) Court will not make order unless parties undertake to bring the issue of arrangements for the children before the Court within a specified time.

A statement of arrangement for children is always also attached to petition.

The M.P.P.A. interprets a child as follows:

A child – in relation to one or both of the parties to the marriage, that is a child out of wedlock, adopted.

Child of the family – child of both parties

Any other child who has been treated by both of the parties as a child of their family (child must be treated as such by both parties) the test is behaviour towards the child (foster child for eg.).

CUSTODY (CARE AND CONTROL)

- (1) An application for custody, care and control may be made by Petitioner/Respondent spouse, guardian/step parent of any child, aunt, grandparent etc. or any other person who, by virtue of a Court order has custody or control of the child or his/her care or supervision.
- (2) Must include on petition prayer for custody
- (3) The Court is the ultimate parent of all children in deciding custody issues – Court has wide discretion on a balance of probabilities will weigh the evidence, look at the circumstances.
- (4) Then apply the legal Test – “What is in the best interest of the child”

Test taken from section 3 of Family law (Guardianship of minors, domicile and maintenance) Act 1981

- (5) Also custody is defined under that act as a right to possession and care of a minor

- (6) So section 3 says in any proceedings before any Court the legal custody or upbringing of a minor or the administration of any property belonging to or held in trust for a minor etc.

The Court in deciding that question shall regard the welfare of the minor as the first and paramount consideration.

- (7) (Under the Family Law Act) the equality of parent's in terms of right to the child and authority as a parent is also established.
- (8) More importantly the Court also considers in applying the said test, what is in the best interest for the right of a child to its natural parents.
- (9) Family Law act also defines Guardianship as guardianship of the person of a minor and includes the right of control and custody of a minor. The right to make decisions relating to the care and upbringing of the minor and the right to make decisions relating to education – religious direction etc.
- (10) Under the family law Act section (6) confers and recognizes a natural right of guardianship in the natural mother and father of a child they are seen as joint guardians.

Where a child is illegitimate the mother is the sole guardian until the paternity of the said child is declared and then the declared father shares joint guardianship of the child

- (11) Split orders can be made for custody, care and control such as:
 - (a) Joint custody/shared care and control
 - (b) Joint custody with care and control to one spouse/parent or to a named party.
 - (c) Custody to one party/spouse care and control to the other
- (12) Joint custody means the right to possession and care of the said child is vested or reposed in both parents equally accordingly neither parent has a pre-emptive right over the other.

It is a desirable order – where parties can agree and get along – before was hardly considered undesirable is a more favourable order today.

- (13) Care and control to one party means – what it says but again expects consensus between parents – its physical possession day to day care.
- (14) Shared care and control
- (15) Remember the giving of custody is a Court's prerogative.
Defacto custody – without order

Only Court – both magisterial and/or High Court has power to grant custody.

- (16) High Court – domain of punie judge has inherent powers wider and superior to that of a Magistrate's – who is mostly a creature of statue.
- (17) So you may go to magisterial Court first – Magisterial grants custody but then you go to High Court for Divorce. The issue of custody can or may be re-opened and possibly decided differently, the judge having overriding powers to that of a magistrate. But in all circumstances the application of the rules of Law the test to be applied are the same.
- (18) Under the new rules/Family Court structures have been set up (still developing) to assist such as:
 - (a) Mediation
 - (b) Co-parent counselling
 - (c) General therapy and counselling
 - (d) Physiological analysis
- (19) I spoke of right of child to parent – access – is not just right of parent to child but more importantly right of child to parent. Accordingly unless it would be proven not in best interest of the welfare of the child to see parent – access is never denied to a parent. Can have supervised access – Family Court though stretched, provides access under supervision where so ordered.

UNDER M.P.P.A.

- (20) Section 47(1) applies to children under 16 years and a statement of arrangement has to be attached to Divorce Proceedings.

OR

Children receiving instructions at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment.

AND

Any other child of the family to whom the Court by an order directs that the section shall apply.

(21) Section 48

- (1) Court can make any order as to custody and education of a child as it think fit permits Court to direct parties to ward ship proceedings.
- (2) Can declare either party unfit in the decree of Divorce or judicial separation. Where declaration of unfitness is made; that party to whom it applies will have no right to the child even on death of the custodian spouse.
- (3) Court can maintain monitoring position from time to time.
- (4) Court can order child to be under supervision of a welfare officer.

(22) Ward ship

- (1) Ward ship proceedings – A power the Court can use to gain immediate control over the person of a child; Court in essence becomes in effect the guardian of such a child.

- (2) Born out of the concept that the crown protects its subjects and in respect to those who are minors exercises a particular authority and observes a special obligation of (parens patriae – Latin for - Father of the country)
- (3) Application is powerful and immediate; as it is made, the child becomes a ward of Court, the hearing is speedy
- (4) Once resident; a foreign child can be made a ward of Court
- (5) Excellent process for where a child is kidnapped and cannot be found or one party would not deliver a child and would not disclose location.

Court has wide/special powers under this process; only concern is the welfare of its ward. Court takes over ultimate responsibility for child (over person and property).

There is no limit to its jurisdiction rights of outside parties/parents (considered).

Once ward; Court will not permit child out of jurisdiction can decide on custody etc.; when all is considered settled – Court orders child to be deawarded.

MUSLIM MARRIAGE AND DIVORCE ACT

45:02

Persons of Muslim faith can apply for Divorce to the respective Muslim council or body. Under the Act and not to Supreme Court; in terms of Divorce for Decree Absolute have same powers as a judge to dissolve a marriage issue order of dissolution or nullity.

Section 17 of the Act establishes the jurisdiction of the Supreme Court or a Judge thereof to entertain applications relating to the maintenance of the wife and custody and maintenance of children, even when marriage was dissolve by council, one of the bodies under Act is “The Trinidad Muslim League Inc.” can come to High Court on issues of custody and maintenance.

MAINTENANCE

(1) Court can make such orders based on evidence and in all circumstances.

Section 23 of M.P.P.A.

Allows for maintenance pending suit; periodical payments from date of presentation of petition to determination of the suit-called an interim order

Section 24 – Lump sum order

On granting divorce, order can be made for periodical payments for a specified time. Order for lump sum or both.

(2) Section 25

Financial provisions for child of family before granting decree or anytime thereafter lump sum payment to benefit children can also be made. Court can vary its maintenance orders from time to time. With regard to maintenance I will say evidence, evidence and evidence. Proof of Respondent's earnings, accounts, moneys where ever it may be.

(3) Proper disclosure of Petitioner's true worth.

(4) Understanding that the same is not used as a means of revenge but to do justice and in most cases create a clean break situation.

(5) Note 25, 26(a) or 28 (which deals mainly with judicial separation) does not apply to children over 18 years of age, by virtue of section 30.

(6) Section 36

Court can make order for maintenance to guardian of mental person.

(7) Section 38

Recognizes – agreements for maintenance, separation agreement

(8) **Section 39**

Allows for alteration of financial agreements variation of said agreements in case of changed circumstances, in just terms. Any clause in any agreement is void that seeks to disallow power of court. Court has power to adjust and make other orders.

(9) Section 40

Allows for alteration of agreement even on death of one party

(10) Section 41

Allows for provisions from divorce spouse's estate.

(11) Section 45

Once you remarry all order for maintenance end except that you can claim any arrears due at date of remarriage.

(12) Section 46

If payments paid by mistaken belief of duty without knowledge of law can apply, court may exercise powers to have money repaid.

ENFORCEMENT OF ORDRES FOR MAINTENANCE

(13) **Attachment of earnings**

(1) Act allows Court to secure payments made under a High Court or Magistrate's Court for maintenance.

(2) Person can apply

(a) Person to whom payment are to be made by order of the Court

(b) Any collecting officer (Re: Magisterial Court)

(c) The debtor

(3) Attachment order – usually requires consent of debtor except where there is proof that the debtor has failed to make one or more payments required by the order.

(4) In Magisterial court – arrest by warrant can be way of enforcement

In High Court under Debtors Act can also imprison – usually done by judgement summons and suspended sentence if not paid called (guarding the order). Attachment of earnings a good alternative to those other forms of enforcement.

(5) The order is directed to a person who appears to the Court to have the debtor in his employment and operates as an instruction to that person.

(6) The directive is to make periodical deductions from the debtor's earnings.

(7) **Section 13**

Is the salient section, that allows Court the power to obtain statements of earnings in any proceedings. The Court has power to make said earnings.

The Court can order the debtor to:

- (a) Give name and address of any person by whom earnings are paid to him.
- (b) Specify particulars as to his earnings and/or anticipate earnings and as to his resources and needs.
- (c) Specify particulars so that debtor can be identified by any employer
- (d) Order any person appearing to Court to have the debtor in his employment to give to the Court statement signed by employer of debtor earnings, etc..

(8) **Section 14**

There is an obligation for an employer and debtor to give notice to Court of any changes in earnings.

THE MAINTENANCE ORDERS

(Facilities for enforcement) Act 2000

- (1) The Act allows for pursuing maintenance; overseas where delinquent spouse maybe.
- (2) The Court can make a provisional order. Provisional means
 - (a) An order made by a Court in Trinidad and Tobago which has no effect unless and until confirmed by a Court in a reciprocating state

OR

- (b) An order made by a Court in a reciprocating state which has no effect unless or until confirmed by a Court in Trinidad and Tobago having power under the Act to so confirm.

(3) **Section (4)**

(a) Of the Act allows for transmission of maintenance orders made in Trinidad and Tobago for registration in a reciprocating state.

(b) Transmission takes place via Attorney general to the responsible authority in reciprocating state. Attorney General would transmit same where satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify transmission of the request.

(4) **Section 5**

- (a) Allows for an application to be made to a Court in Trinidad and Tobago for a maintenance order against any person who is proved to be proceeding to residing in or have assets in reciprocating state – Court has jurisdiction to make the order

for maintenance as if person residing here but summons would have to have been served upon the person.

- (b) A provisional order will not take effect until confirmed by a competent Court in the reciprocating state. Once confirmed the order shall be treated as if a Court in this jurisdiction which made the order had made it in the form in which it was confirmed.
 - (c) Proper officer of Court then sends order to Attorney General for transmission.
- (5) Order under this Act can be varied/revoked/set aside etc by a provisional order in the case of a wife only upon remarriage order ceases to have effect.

(6) **Section 11**

- (a) Allows for a provisional order made by a Court in a reciprocating state to be confirmed and enforced in Trinidad and Tobago.
- (b) Certified copy of order is sent to Attorney General who then sends it to the proper officer of the Court and the same is registered in said Court.
- (c) Before order is registered information is to be ascertained as to whether payer is residing in the jurisdiction or has assets located here. If the same is negative the provisional order is returned.

(7) **Section 13**

Proceedings in the Court must be commenced for confirmation of order when sent to the Court, must be service of proceedings upon payer of his – proceedings carried out as if maintenance order against payer had been made by the Court.

(8) **Section 14**

An order registered in Trinidad and Tobago Courts shall be enforced in the jurisdiction as if it had been made by the Court.

(9) Section 16

If ever Court order made in High Court, then that would be the jurisdiction of Magisterial Court same.

(10) Section 17

A conversion of sum of money to be paid to local currency must be carried out must follow rate of exchange prevailing at the date or confirmation – from any branch of bank licensed under the Banking Act.

Family Law (Guardianship of minors, domicile and maintenance) Act. Section 25 also empowers Court to order maintenance for spouse and child of family and provides for enforcement.

MATRIMONIAL PROPERTY

Section 26

(1) On granting Divorce, nullity, judicial separation or at any time thereafter (can only make property settlement order at time of decree; order will not take effect until after decree absolute is granted.

(2) The Court can order:

(a) A transfer of property from one party to the other, any child of the family or such person as may be specified in the order for the benefit of a child.

(b) A settlement of such property as may be specified, be made to the satisfaction of the Court for the benefit of the other party to the marriage and of children of the family or either or any of them.

(c) An order varying for the benefit of the parties to marriage and of the children of the family or either or any of them, any antenuptial or post nuptial settlement (including one by will/cordial) made on parties to the marriage. Order can be made even if they are no children.

Section 27 is cogent to how the Court is to be guided with regard to section 24/26.

(3) (In a nutshell)

The Court shall regard all the circumstances

- (a) Income, earning capacity, property and other financial resources which each party has or is likely to have in the future.
- (b) The financial needs obligations and responsibilities which each party has or is likely to have in the future.
- (c) Standard of living enjoyed by the family before the breakdown of the marriage.
- (d) The age of each party to the marriage and the duration of the marriage.
- (e) Any physical or mental disability of either of the parties to the marriage.
- (f) Contributions made by each of the parties to the welfare of the family including any contribution made by looking after the home or caring for the family.
- (g) If Court made an order under (53) order for occupation of home.
- (h) In case of divorce or nullity of marriage the value to each party of any benefits (eg. Pension) which by reason of the dissolution or annulment of marriage that party will lose the chance of acquiring.

- (4) And so to exercise those powers as to place parties so far as it is practicable and having regard to their conduct just so to do, in the financial position in which they would have been if the marriage had not broken down and each party had properly discharge his or her financial obligations and responsibilities towards the other.

- (5) With regard to children
- (a) Financial needs of the child
 - (b) The income, earning capacity (if any), property and other financial resources of the child.
 - (c) Physical and mental health of child
 - (d) The standard of living enjoyed by the family before the breakdown of the marriage.
 - (e) The manner in which the child was being educated and family expectations of same.

So to place the child where practicable and just to do in the financial position in which he could have been in if marriage had not broken down.

- (6) Section 29
Disallows right to apply upon remarriage of the spouse who seeks to apply.
- (7) Orders can be varied/adjusted, section 31. Order under 23, 24 (1)(a) or (b) 24 (2)(b) no variation for lump sum but can vary payment by instalments order under 25(2) (a) or (b) section 25(4); order under 26 (1)(a), (c) or (d) no variation under 26 (a)
- (8) Case of White vs White
The Court now persuaded by the English case of White vs White looks to equality of treatment – general trend is towards equal division of matrimonial assets.
- (9) Section 41
Former spouse can request reasonable provision from the estate of the deceased former spouse once not remarried on the ground that the deceased had not reasonably provided for the survivor's maintenance after the deceased's death. Application must be made within six months after date on which representation in regard to the estate of the deceased is first taken out – need leave of Court.
- (10) Section 44

- (a) Once court is satisfied that the other party with the intention to defeat the claim of their spouse for financial relief enters into or is about to enter into any disposition or transfer out of jurisdiction or otherwise deal with any property in a said manner. The Court can make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim and the disposition would have the consequence as has been the consequence of defeating the Applicant's claim.
- (b) Court can set aside disposition and give directions it thinks fit.
- (c) Where disposition took place less than 3 years prior to application Court can still set aside or direct as it thinks fit.
- (d) Subject to the right of a Bona Fide purchaser for value.

THE MATRIMONIAL HOME

(1) **Section 53**

Court can make order as to who can occupy the Matrimonial home.

Under **section 56** where grant occupation can grant order for possession of furniture and household articles or any part thereof with due notice to third parties eg. Hire purchase.

(2) **Section 54**

Where Court is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payment, services, prudent management or otherwise) (*Speak out Clutton vs Clutton*) may, if it thinks fit an application of either spouse **made before** the decree of divorce is made – make an order.

- (a) Directing sale of the matrimonial home and division of the proceeds after the payment of expenses of sale between the parties in such proportions as the Court thinks fit.
- (b) Or directing one party to pay to the other such sum in lump sum instalments, or at some future date as Court thinks fit.

- (c) Can also direct that specified portion of proceedings be paid or applied for the benefit of the children of the family.
- (d) Amount payable constitutes a debt at death, order binding on estate of deceased spouse
- (e) The Court may appoint a person to sell the matrimonial home and divide or apply the proceeds accordingly.

(3) Section 55

Allows Court to vest Matrimonial home in parties in common and to apportion shares as it thinks fit – where parties once held property jointly.

(4) Section 56

Even where property is tenanted where Court grants a decree of divorce it may at same or any subsequent time if it thinks fit, make an order vesting in the Petitioner or the Respondent the tenancy of any dwelling house.

(a) Where the applicant, wife or husband was either the sole tenant or a tenant holding jointly or in common with the applicant.

(b) Where the other parties was at time of order a tenant.

(c) The applicant resides at the time.

The effect of the order would be, to make the applicant a tenant of the dwelling house. Notice of course must be given to the landlord to have right to appear and be heard.

RECOGNITION OF OVERSEAS DECREES

(1) Section 62

The validity of any decree or order or written law for divorce or dissolution or nullity of marriage made before or after commencement of the Act by a Court or Legislature of any country outside Trinidad and Tobago, by virtue of the section, be recognized in all Trinidad and Tobago courts.

RECOGNITION OF FOREIGN DECREES OF DIVORCE & NULLITY

- (1) Courts have jurisdiction to recognize foreign decrees. Come to court on application for recognition.
- (2) Must prove for nullity that one or both of the parties were domiciled in that country
OR
On residence if over two years
OR
Basis that parties or one of them is a national or citizen of said country
OR
On basis that marriage celebrated according to their law.
- (3) For divorce of judicial separation must prove.
 - (a) Either spouse was habitually resident in said country.
 - (b) Either spouse was a national of said country
- (4) **Section 62 (D)**
Requires proof of facts relevant to recognition – finding of fact.
 - (8) Both parties took part in proceedings be conclusive evidence of fact found and in any other case be sufficient proof of that fact unless contrary is shown.
- (5) Non judicial divorces not recognize save and except under Muslim marriage and divorce Act.

- (6) The non recognition of a Divorce in any other country if recognized in Trinidad and Tobago would not prevent parties from remarrying.
- (7) If according to the law of Trinidad the marriage did not exist then foreign divorce would not be recognized.

FAMILY COURT/NEW PROCEDURES

NEW RULES

- 1. New rules called Family proceedings rules of 1998 amended 2003
- 2. Court came into function in 2003
- 3. New rules are a manual for how process functions and replaces the Matrimonial causes rules for the running of Family Court
- 4. Hearings in Family Court are in camera by dint of way Court is set up.

Only respective parties and lawyers are given audience – unless witnesses are called

- 5. Courts set up with a view to expedite the process and encourage settlement
- 6. Litigants are given access to mediation, counselling, therapy, co-parent counselling, physiological assistance etc.

OVERRIDING OBJECTIVE

1. Rules establish an overriding objective which would enable the Court to deal with family matters justly and in a way which, in proceedings affecting a child of the family, gives just and paramount consideration to the welfare of the child.
2. Dealing justly with a case includes
 - 1) Ensuring as far as practicable that the parties are on an equal footing and are not prejudiced by their financial position.
 - 2) Encouraging settlement of any disputes by negotiation or mediation or other means
 - 3) Saving expense
 - 4) Dealing with cases in ways which are proportionate to the complexity of the issues and to the financial position of the parties.
 - 5) Ensuring that it is dealt with expeditiously
 - 6) Allotting to each matter an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.
 - 7) Giving first and paramount consideration to the welfare of any child of the family where any question relating to custody or supervision of or access to, that child is concerned.

This includes where practicable to encourage

1. Better relationships between parents and others involved in caring for the child and in particular communication and co-operation with regard to the parenting of such child.
2. Improving and developing the relationship between each parent and others and the child.
- 8) Taking into account the following circumstances.

- a. The ascertainable wishes and feelings of the child concerned (considered in the light of his/her age and understanding)
- b. Physical, emotional and educational needs
- c. Cultural, ethnic background
- d. Likely effect on child of any change in circumstances
- e. Age, sex, background; any special characteristics which the Court considers relevant.
- f. Any harm which has been suffered by child or is a risk of suffering
- g. How capable each of the parents and any other person in relation to whom Court considers, the question to be relevant, is of meeting his needs.

APPLICATION OF OVERRIDING OBJECTIVE

Court shall seek to give effect to overriding objective in exercise of its discretion given to it by the rules or interprets the meaning of any rule.

DUTY OF THE PARTIES

The parties are required to help the Court to further the overriding objecti

FINAL WORDS

All in all the law is developing to meet the needs in this area and indeed to meet global requirements.

The support systems are being put in place – maybe not fast enough but there is a great effort now (Eg. Family court even indigent can be assisted with subsistence for travel to and from Court)

We are moving far away from the adversarial approach in family matters. The move is towards a clean break, getting on with your life, agreeing to disagree, and recognizing that the family structure, where there are children, still needs to be secured for the children's sake outside of the marriage bond.

The society just needs to follow.

WORDS ON IMPACT OF DIVORCE

We all will acknowledge that the break down of a marriage, family structure is regrettable, sad even.

For women – whose natural and basic instinct it is, to nurture and be nurtured, it is a grave disappointment and the world as you know it crumbles. “*Some say divorce is like grief for a death, except the dead is living.*” But being a Divorcee myself, I have learnt that life is about the

journey of living. Like every journey you may be faced with the challenges of disappointment. It's not the blows you are dealt (I do not mean this literally) or how many times you fall its getting up and moving on. I know that when we try to get up, life throws us lifelines to hold on to. You can view your Divorce situation as a complete disaster with no way out and so it will be, or you can apply practicable and positive attitudes to same.

See it as a life change that propels your growth and an investment in selffulness. Such that allows you to be strong and recognize your self worth. You can see yourself like the phoenix rising from the ashes having the renewed opportunity for self discovery and growth.

A marriage that provides you with nurture, room to grow, good family relations and room for self development is a wonderful thing.

I am not promoting divorce, but I do believe that if you find yourself in a situation that denies you personal happiness, self development that demeans and humiliates you, that stifles your basic human expressions and crushes your self esteem, you are in a toxic relationship. One that is harmful to you physically, mentally and spiritually. You owe yourself release and relief from harm.

You do not have to rush to divorce, but you should strive to make a change in your life that would honour you and your children. The law has provided the structures in Trinidad and Tobago for your effort in this regard.

I think it is written somewhere "but for the hardness of your hearts Moses invented Divorce."

Indeed Moses recognized the need to be released from toxic and harmful relationships. We live in an imperfect world and must therefore strive to preserve as much as possible our well being.

THANK YOU...

ALICE DANIEL.....

