

Commonwealth Caribbean Family Law Husband, Wife and Cohabitant: Book Review

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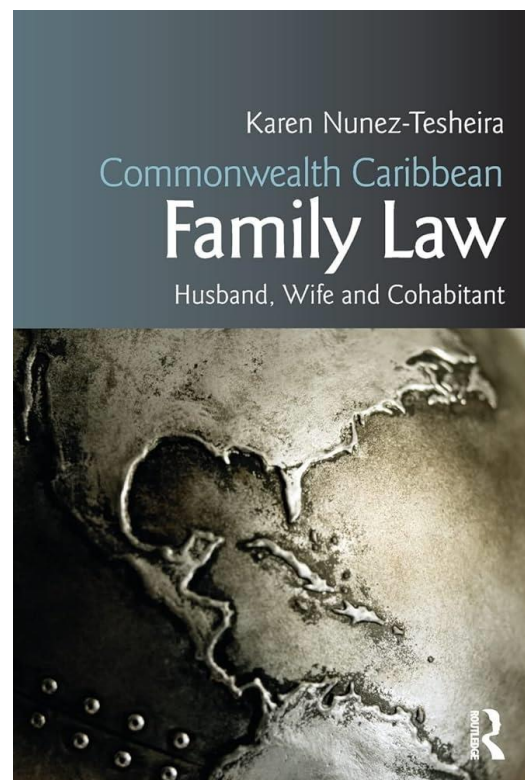
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Commonwealth Caribbean Family Law: Husband, Wife, and Cohabitant, By Karen Nunez-Tesheira, Routledge, 2016, ISBN. 9781138801806, link of the book: <https://www.routledge.com/Commonwealth-Caribbean-Family-Law-husband-wife-and-cohabitant/Tesheira/p/book/9781138801806>

INTRODUCTION

"Commonwealth Caribbean Family Law: Husband, Wife, and Cohabitant" by Karen Nunez-Tesheira, published by Routledge in 2016, is part of the Commonwealth Caribbean Law Series. This comprehensive book delves into the intricate legal landscape surrounding family relationships in the Commonwealth Caribbean region. With a focus on the rights, obligations, and protections of husbands, wives, and cohabitants, Nunez-Tesheira likely explores various aspects of family law, including marriage, divorce, property rights, child custody, and maintenance. The book structured to provide a thorough examination of relevant statutes, case law, and legal principles, offering insights into the complexities of familial dynamics within the Caribbean context. Through meticulous analysis and scholarly research, Nunez-Tesheira's work likely serves as a valuable resource for legal practitioners, scholars, and students seeking to understand the legal framework governing family relationships in the Commonwealth Caribbean (Nunez-Tesheira, 2016).

This legal terrain navigates a blend of historical precedents, cultural traditions, and modern legal developments, shaping the rights, responsibilities, and protections afforded to individuals within these familial units. Tesheira's exploration likely highlights the evolving nature of Caribbean family law, which not only addresses traditional marriages but also



acknowledges the increasing prevalence of cohabitation arrangements. Tesheira's exposition on Commonwealth Caribbean Family Law showed the multifaceted nature of familial relationships in the region, where legal principles intersect with cultural values and social realities. By dissecting the legal rights and obligations of husbands, wives, and cohabitants, Tesheira offers insights into the nuances of familial dynamics and the legal mechanisms in place to regulate them. Her work may shed light on how Caribbean societies grapple with balancing tradition and modernity in family law, addressing issues such as gender equality, parental rights, and the protection of vulnerable parties.

"Commonwealth Caribbean Family Law: Husband, Wife, and Cohabitant" by Karen Nunez-Tesheira is a groundbreaking text that meticulously examines family law across fifteen Commonwealth Caribbean jurisdictions. It provides comprehensive coverage of key substantive areas such as marriage, divorce, financial support, property rights, and domestic violence, making it a pioneering resource in the field. The book delves into 14 Part, the rights of statutory spouses in Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago, offering jurisdiction-specific insights often overlooked in English family law texts. It also elucidates the diverse divorce regimes prevalent in the region, from matrimonial offence divorce models to no-fault models, providing a nuanced understanding of legal frameworks. With its thorough exploration and detailed analysis, this text is poised to become an indispensable resource for law students, legal academics, family law practitioners, and professionals in related fields like sociology and social work across the English-speaking Caribbean.

Chapter 1 of "Commonwealth Caribbean Family Law: Husband, Wife, and Cohabitant" meticulously lays the groundwork for a comprehensive understanding of family law within the Commonwealth Caribbean. It begins by delineating the scope of the work, emphasizing its focus on the diverse jurisdictions of the region and the multifaceted nature of matrimonial causes. Through a systematic exploration, the chapter navigates through various topics, including the legislative models governing family law, the reception of English matrimonial laws, the administering courts, jurisdictional principles, and the recognition of foreign decrees and marriages. This structured approach not only provides readers with essential background knowledge but also facilitates a nuanced understanding of the intricate legal frameworks that shape familial relationships within the Commonwealth Caribbean. Chapter 1 serves as an indispensable primer, setting the stage for deeper exploration into the substantive areas of family law covered in subsequent chapters, and making it an essential resource for legal practitioners, scholars, and students seeking insight into this complex field. This chapter not only provides important basic knowledge, but also prepares readers to understand deeper issues in subsequent chapters. Overall, this chapter is a very useful and basic introduction, making it a very important reference source for anyone interested or involved in the field of family law in the Commonwealth Caribbean.

Chapter 2 offers an exploration of marriage within the Commonwealth Caribbean. Divided into two parts, the chapter meticulously examines both the contractual requirements of marriage and the formalities surrounding its solemnisation. In the first part, readers are guided through the legal prerequisites for marriage, including eligibility criteria such as single status, age requirements, mental capacity, and prohibited degrees of relationship. The second part delves into the procedural aspects of marriage, covering the issuance of authorising documents, notification procedures, the issuance and duration of marriage licences, the solemnisation process itself, and the registration of marriages post-solemnisation. Throughout, the chapter provides detailed insights into the legal intricacies and regulatory

frameworks governing marriage in the Commonwealth Caribbean, offering readers a comprehensive understanding of this foundational institution within the region. After reading Chapter 2, the readers gained a deep understanding of how marriage is legally regulated in the Caribbean region of the Commonwealth. This chapter provides a very detailed insight into two main aspects of marriage: the contractual requirements and the formalities of its implementation. In terms of contractual requirements, the readers learned about eligibility criteria such as single status, age limits, mental capacity, and prohibited relationships. Meanwhile, the procedural aspect explains the process of issuing authorization documents, notification procedures, duration and issuance of marriage licenses, the process of carrying out the marriage itself, as well as registration of marriage after the implementation.

Chapter 3 offers a detailed exploration of the legal landscape surrounding non-marital unions and the status of the statutory spouse within specific Commonwealth Caribbean jurisdictions, including Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago.

Beginning with an introductory overview, the chapter systematically classifies non-marital unions and examines statutory definitions in each jurisdiction, considering their purposes and nuances. It further deconstructs these definitions, shedding light on common elements such as the meaning of cohabitation, the minimum period required, and the significance of continuity and intention. The chapter also delves into the termination of cohabitation, time limits for making applications, and the status of the cohabitant, offering insights into the interpretation of "single" and the standard of proof required. After reading Chapter 3, the reader gained a deep understanding of how laws in the Commonwealth Caribbean regulate extramarital relationships and spousal status under the laws of several specific jurisdictions, such as Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago. This chapter provides a systematic classification of extramarital relationships and explores the statutory definitions in each of these jurisdictions, including the purpose and nuances of those definitions. The reader learned about the common elements in these definitions, such as the meaning of cohabitation, the minimum period required, and the importance of continuity and intention in the relationship.

Chapter 4 meticulously explores the legal ramifications of both marriage and union other than marriage within the Commonwealth Caribbean jurisdictions. Beginning with an introductory overview, the chapter systematically navigates through various legal implications, starting with the formalities associated with both marital and non-marital unions. It further delves into critical aspects such as the status of children born out of non-marital unions, spousal inheritance, succession rights, financial support, and property rights, offering profound insights into the legal protections and entitlements extended within these familial contexts. Additionally, the chapter explores the concept of consortium vitae and its manifold consequences, encompassing aspects like the use of a husband's name, marital confidences, and marital-related criminal offenses.

Chapter 5 provides an exploration of the nullity of marriage within the Commonwealth Caribbean jurisdictions. Beginning with a historical overview of void and voidable marriages, the chapter meticulously delineates between these legal categories and their respective implications. It delves into the intricate process of granting nullity, detailing a two-stage process and examining the grounds for declaration of nullity across jurisdictions. Moreover, the chapter explores the decree of nullity, focusing on voidable grounds and specific instances in Barbados and Jamaica. It also addresses bars to nullity for voidable marriages and discusses the legal consequences of nullity, considering both common law and statutory positions.

Chapter 6 of "Commonwealth Caribbean Family Law: Husband, Wife, and Cohabitant" provides a detailed exploration of judicial separation orders within the Commonwealth Caribbean jurisdictions, excluding Antigua and Barbuda, Barbados, Jamaica, and St Kitts and Nevis. Beginning with a historical overview, the chapter navigates through the applicable jurisdictions and the effects of judicial separation orders on marital relationships and the rights of the parties involved. It also addresses the reversal of such orders and examines whether they are redundant compared to divorce decrees, highlighting key differences between the two legal mechanisms. Furthermore, the chapter explores the distinctions between judicial separation orders and divorce decrees, offering insights into grounds, procedural differences, and any prescribed minimum periods.

Chapter 7 of "Commonwealth Caribbean Family Law: Husband, Wife, and Cohabitant" provides an extensive analysis of the dissolution of marriage within the Commonwealth Caribbean jurisdictions. It outlines the historical development of divorce laws and identifies various divorce regimes, including the matrimonial offense model, hybrid models, mixed fact regimes, and no-fault divorce regimes. The chapter delves into the role of courts, reconciliation provisions, and standards of proof. It also explores specific grounds for divorce such as adultery, cruelty, insanity, desertion, and unreasonable behavior, along with the legal implications and procedural aspects from decree nisi to decree absolute. This chapter addresses the unique context of Muslim divorce in Trinidad and Tobago. This detailed examination offers a comprehensive understanding of the legal framework and procedural intricacies governing divorce in the region. After reading Chapter 7, readers gain a comprehensive insight into the dissolution of marriage in Commonwealth Caribbean jurisdictions. This chapter provides an in-depth analysis of the historical development of divorce law and identifies various divorce regimes, including the marital breach model, the hybrid model, the mixed facts regime, and the no-fault divorce regime. Readers are invited to understand the role of the court, reconciliation provisions, and standards of proof in divorce cases. In addition, this chapter explores specific reasons for divorce such as adultery, cruelty, insanity, desertion, and unreasonable behavior, along with their legal implications and procedural aspects from decree nisi to decree absolute.

Chapter 8 focuses on the frameworks governing spousal maintenance, property adjustment orders, clean break orders, and anti-avoidance provisions in the Commonwealth Caribbean jurisdictions. It begins by classifying the tests applied in different regions, such as the reasonable requirements test and the equal sharing yardstick, and explores their implications for spousal maintenance and property distribution. The chapter then delves into the means and ability test aimed at achieving self-sufficiency for maintenance applicants. It also covers the concept of clean break orders, differentiating between immediate and deferred orders, and their impact on spousal financial independence post-divorce. Lastly, it addresses anti-avoidance provisions designed to prevent the dissipation of marital assets, detailing the requirements for intent and the qualifications for parties involved. After reading Chapter 8, readers gain in-depth insight into the framework governing spousal support, property adjustment orders, clean break orders, and anti-avoidance provisions in Commonwealth Caribbean jurisdictions. This chapter begins by classifying the tests applied in various areas, such as the reasonable needs test and the equitable distribution benchmark, and explores their implications for spousal maintenance and property distribution. Readers also understand the ability tests and means aimed at achieving self-sufficiency for livelihood applicants. The

concept of a clean break order, distinguishing between immediate and pending orders, and its impact on a couple's financial independence after divorce are also discussed in depth.

Chapter 9 provides a detailed examination of spousal maintenance laws across various jurisdictions. It begins with an historical overview, highlighting the sources of these laws and early protections for wives' property and earnings. The chapter then explores spousal maintenance applications in the High Court following the dissolution of marriage, nullity, or judicial separation, outlining the relevant tests and factors considered, such as the financial needs, earning capacities, and the welfare of children. Further, it covers maintenance applications during marriage, including common law rules and statutory modifications, and addresses summary court applications, noting a shift from fault-based approaches in some jurisdictions. Finally, the chapter discusses maintenance applications during or after cohabitation, types and durations of maintenance orders, and their enforcement, emphasizing the legal nuances in Barbados, Jamaica, Trinidad and Tobago, and Belize. After reading Chapter 9, readers gain in-depth insight into spousal support laws in various jurisdictions. This chapter begins with a historical overview, highlighting the sources of this law and its early protection of a wife's property and income. Readers are invited to understand the application of spousal support in the High Court after divorce, annulment of marriage, or judicial separation, with an explanation of the test and factors considered, such as financial need, earning capacity, and the welfare of children. Additionally, this chapter discusses the application of maintenance during marriage, including common law rules and statutory modifications, as well as applications in summary court, noting the shift away from fault-based approaches in some jurisdictions.

Chapter 10 of "Commonwealth Caribbean Family Law" delves into statute-based property adjustment regimes in various jurisdictions, excluding Antigua and Barbuda, Montserrat, and St Kitts and Nevis. It starts with an introduction to the statutory regimes, providing a jurisdictional overview and discussing the statutory property regimes in Anguilla, BVI, Dominica, Grenada, St Lucia, SVG, The Bahamas, and Trinidad and Tobago. The chapter outlines the applicable statutory factors and specific provisions for each jurisdiction, including property alteration orders and the legal nuances in Barbados, Belize, Guyana, Jamaica, and St Lucia. Furthermore, it explores the statutory regime for cohabitants in Trinidad and Tobago, emphasizing the contribution-driven approach and the financial resources of partners. The second part of the chapter presents an overview of spousal property orders, detailing the types of orders available, such as transfer of property, occupation orders, and lump sum compensation orders, along with provisions for variation and revocation of these orders. After reading Chapter 10, readers gain a comprehensive insight into the law-based property adjustment regimes in various Commonwealth Caribbean jurisdictions, with the exception of Antigua and Barbuda, Montserrat, and St Kitts and Nevis. This chapter provides an overview of the statutory property regimes in Anguilla, BVI, Dominica, Grenada, St Lucia, SVG, The Bahamas, and Trinidad and Tobago. Readers understand the applicable statutory factors and provisions specific to each jurisdiction, including property change orders and the legal nuances thereof in Barbados, Belize, Guyana, Jamaica, and St Lucia. This chapter also explores the statutory regime for cohabiting couples in Trinidad and Tobago, with an emphasis on an approach based on the partners' financial contributions and resources.

Chapter 11 discusses the common intention constructive trust and its relevance in Commonwealth Caribbean jurisdictions. It begins by tracing the origins and defining the purpose of the common intention constructive trust, distinguishing it from the resulting trust. The chapter explores the implications of the Married Women's Property Act (MWPA) in this

context, focusing on the necessity of proving common intention, particularly in cases involving sole and joint legal ownership. It delves into the evidentiary hurdles, highlighting the types of evidence required to establish common intention, such as direct, financial, and non-financial contributions. The process of quantifying beneficial entitlement is also examined, emphasizing the difference in approach between sole and joint legal ownership cases. After reading Chapter 11, readers gain deep insight into the role and relevance of common intention constructive trusts in Commonwealth Caribbean jurisdictions. This chapter provides an exploration of the origins and objectives of common intention constructive trust, as well as its differences with resulting trust. Readers learn about the implications of the Married Women's Property Act (MWPA) in this context, especially regarding the importance of proving joint intent, particularly in cases of sole and joint legal ownership.

Chapter 12 focuses on marital agreements, covering maintenance and cohabitation agreements, as well as ante-nuptial and post-nuptial agreements. The chapter begins by defining maintenance agreements and explores their legal standing across various jurisdictions. It outlines the common law and statutory positions regarding these agreements and examines the factors that influence their enforceability, such as compliance with formal requirements, knowledge and approval, professional advice, full disclosure, provisions within the agreement, changed circumstances, and court approval. The chapter also delves into the interpretation, enforcement, termination, and revocation of these agreements. In the second part, the focus shifts to nuptial agreements, discussing their historical and current legal standings, particularly in light of influential judicial decisions like *MacLeod* and *Radmacher*. After reading Chapter 12, readers gain in-depth insight into marriage agreements, including maintenance and cohabitation agreements, as well as prenuptial and postnuptial agreements in the Caribbean region of the Commonwealth. This chapter begins by defining maintenance agreements and exploring their legal position in various jurisdictions. The reader understands the position and common law statutes relating to this agreement as well as the factors affecting its enforceability, such as compliance with formal requirements, knowledge and consent, professional advice, full disclosure, terms of the agreement, changes in circumstances, and courts. agreement.

Chapter 13 of "Commonwealth Caribbean Family Law" examines spousal family provision laws in Barbados, Guyana, Jamaica, The Bahamas, and Trinidad and Tobago. It begins by outlining the relevant legislation, detailing the net estate liable for provision and criteria for qualifying as a spouse. It discusses the implications of family provision orders and the limited incidence of such applications in cases of intestate succession. The chapter explores the extent of spousal entitlement, noting variations between jurisdictions, and specifies time limits for applications. It also describes different types of financial provision orders and their potential for variation and discharge. The chapter highlights the tests applied to determine provision—both objective and subjective—and provides an overview of factors considered in making orders, supported by case law illustrations. After reading Chapter 13, readers gain comprehensive insight into the laws of family provision for couples in Barbados, Guyana, Jamaica, The Bahamas, and Trinidad and Tobago. This chapter begins by outlining the relevant laws, detailing the net assets responsible for providing and the criteria for qualifying as a spouse. Readers understand the implications of family provision orders and the low incidence of such applications in cases of intestate inheritance.

Chapter 14 of "Commonwealth Caribbean Family Law" addresses domestic violence, starting with an overview of domestic violence legislation across various jurisdictions. It traces the historical context and objectives of these laws, then moves on to defining domestic violence, noting differences in statutory definitions and components across regions, including places like Barbados, Jamaica, Montserrat, and SVG where no statutory definitions exist. The chapter explores who can apply for protection, including de facto wives, non-residential applicants, and same-sex partners in Guyana. It examines various protective orders, such as protection/non-molestation orders, occupation orders, tenancy orders, and ancillary relief orders, as well as undertakings and ex parte orders. It discusses the duration, variation, and discharge of these orders, the court's standard of proof, and the enforcement mechanisms, penalties, and roles of police and state agencies. After reading Chapter 14, readers gain in-depth insight into domestic violence laws in various Commonwealth Caribbean jurisdictions. This chapter provides the historical context and purpose of domestic violence legislation, as well as definitions of domestic violence that vary by region, including Barbados, Jamaica, Montserrat, and SVG, where there is no specific statutory definition. Readers understand who can apply for protection, including de facto wives, applicants who do not live together, and same-sex couples in Guyana.

CONCLUSION

"Commonwealth Caribbean Family Law" provides a comprehensive and detailed examination of family law within the Caribbean context, significantly enhancing understanding of the region's legal landscape regarding family matters. By meticulously covering topics such as spousal maintenance, property adjustment, marital agreements, family provision, and domestic violence, the book elucidates the nuances and jurisdictional differences that shape family law practices across various Caribbean countries. Its thorough analysis and comparative approach offer valuable insights into both common law and statutory frameworks, making it a crucial resource for legal practitioners, scholars, and students. This work stands out in its depth and breadth, contributing substantially to the field of family law and serving as an essential reference for understanding the legal intricacies and cultural considerations that influence family law in the Caribbean.

REFERENCES

Nunez-Tesheira, K. (2016). *Commonwealth Caribbean Family Law: Husband, Wife, and Cohabitant*. Routledge.