IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Appeal No BZCV2024/001
BZ Civil Appeal No 23 of 2019

BETWEEN

GULAB LALCHAND **APPELLANT**

AND

RUTILIA OLIVIA SUPALL **RESPONDENT**

Before: **Mr Justice Anderson**
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Burgess
Mr Justice Jamadar

Date of Judgment: **13 December 2024**

Appearances

Ms Magali Marin Young SC and Mr Allister Tre Jenkins for the Appellant

Ms Nazira Uc Myles for the Respondent

Family law – Common law union – Cohabitational relationship – Cohabitational agreement – Separation agreement – Whether a separation agreement between parties in a common law union is binding.

Practice and Procedure – Jurisdiction – Whether a court can make declarations outside of an agreement between parties to a common law union – Supreme Court of Judicature Act, CAP 91, s 148E.

Family law – Common law union – Property settlement – Property adjustment – Valuation of property in proceedings – Duty of disclosure – Supreme Court of Judicature Act, CAP 91, s 148E.

SUMMARY

The Appellant, Mr Gulab Lalchand and the Respondent, Ms Rutilia Supall were in a common law union for approximately eight years. In July 2011, in anticipation of a separation, the parties entered into an agreement that mentioned specific assets owned by them, but they continued cohabiting for a further four years.

Following their separation, Ms Supall claimed in the High Court for declarations regarding assets that were acquired during the subsistence of the union, including an interest in assets that were not mentioned in the agreement. These included shares in Benzer International Co Ltd ('Benzer'), in the name of which the parties had conducted business, and an interest in a property, ('the Venezuela Site home'), in which the parties had cohabited and title to which was in the name of a third party. The children, as legal owners of the shares, and Benzer were named interested parties in the proceedings.

The trial judge upheld the validity of the agreement and found that Ms Supall did not have any interest in Benzer and the Venezuela Site home (hereinafter collectively referred to as 'the disputed assets'). The judge declared that Mr Lalchand had a beneficial interest in Benzer and the Venezuela Site home of not less than 51 per cent respectively. It was further declared that Ms Supall, considering her contribution to the relationship, should have an interest in Mr Lalchand's beneficial interest in the disputed assets of around 35 per cent. In arriving at a valuation of the assets, the trial judge found that Mr Lalchand was best placed to provide information to the court of the value of the assets but did not do so sufficiently and therefore the court relied on such evidence as was provided along with its own judgment.

In valuing the shares in Benzer, the trial judge used the incomplete financial information provided on behalf of Mr Lalchand and thereafter adjusted the figure to reflect her sense of things. As for the Venezuela Site home, the judge referred to the debt for which the property stood as security, the amount paid by Mr Lalchand to discharge the mortgage on the property, the amount for which it was mortgaged and the purported monthly rent that Mr Lalchand paid. Thus, it was ordered that Mr Lalchand pay Ms Supall BZD240,000

representing 35 per cent of his interest in the disputed assets. The Court of Appeal, by majority decision upheld the orders made in the High Court.

On appeal to the Caribbean Court of Justice ('CCJ' and 'the Court'), the Court observed that the core of Mr Lalchand's appeal was that the High Court had jurisdiction to make declarations regarding property rights in the disputed assets but should have exercised its discretion to refuse to exercise that jurisdiction because the holders of title to the disputed assets had not been made parties. The Court reviewed the participation of the legal owners of the disputed assets in the High Court proceedings and noted that the owners of the shares in Benzer, Mr Lalchand's children, were named interested parties in those proceedings, had legal representation, made submissions and were awarded costs against Ms Supall. It was concluded that there could hardly have been greater participation had they been named as parties. Similarly, it was noted that the title holder of the Venezuela Site home had provided affidavit evidence and oral testimony in support of Mr Lalchand's case denying that he retained a beneficial interest in the property. This allowed the High Court to properly analyse his evidence along with the other evidence relating to Mr Lalchand's ownership. The CCJ concluded that legal process was satisfied and that there would have been no greater participation by him had he been added as a party to the proceedings. In addition, the Court found that the order of the High Court was contemplated under s 148E(7) of the Supreme Court of Judicature Act, which permitted the court to make orders that did not bind the legal owners of property.

The CCJ further decided that it was not fatal that Ms Supall had not sought separately a declaration of trust as the Act permitted the Court to hear together all claims concerning a subject matter to prevent a multiplicity of proceedings. The Court also addressed the locus standi of Mr Lalchand to raise objection to the court's jurisdiction because third parties were not made parties in the proceedings. It was decided that Mr Lalchand did not have sufficient interest or standing to purport to litigate that matter.

The CCJ affirmed the principle that the existence of a nuptial agreement did not preclude the court from making a property adjustment order under s 148E(3) of the Supreme Court of Judicature Act. The court has the jurisdiction to alter rights in property belonging solely

to one party in the common law union. In this regard, the trial judge properly considered the factors outlined in s 148E(5) of the Supreme Court of Judicature Act. In coming to this conclusion, a majority of the judges adopted a social context and gender sensitive approach to the analysis of the relevant law.

As it related to the valuation of the disputed assets conducted by the trial judge, the Court upheld the reliance by the trial judge on evidence provided by Mr Lalchand, who bore the burden of supplying the relevant valuation evidence and had failed to do so. It was therefore rejected that the valuation done by the judge was open-ended or speculative.

Accordingly, the Court dismissed the appeal and awarded costs to Ms Supall in the agreed sum of BZD40,000.

Cases referred to:

Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd [2024] CCJ 3 (AJ) BB; *Armstrong, Re ex p Boyd* (1888) 21 QBD 264; *Boswel's Case* (1605) 6 Co Rep 48b, 77 ER 326; *Buckland v Buckland* [1900] 2 Ch 534; *Cocksedge v Cocksedge* (1844) 14 Sim 244, 60 ER 351; *Cupid v Thomas* (1985) 36 WIR 182 (VC); *Fisher Meredith v JH* [2012] 2 FLR 536; *Francois v A-G* LC 2001 HC 16 (CARILAW), (24 May 2001); *Fraser v Fraser* (GY HC, 1 July 2014); *H v H* [2008] 2 FLR 2092; *H v W* (1857) 3 K & J 382, 69 ER 1157; *Harrinarine v Aziz* (TT HC, 13 March 1987); *Hyman v Hyman* [1929] AC 601; *Jones v Kernott* [2012] 1 AC 776; *Khan v Khan* GY 1970 HC 12 (CARILAW), (30 December 1970); *Lalchand v Supall* BZ 2022 CA 36 (CARILAW), (30 December 2022); *MacLeod v MacLeod* [2010] 1 AC 298; *Maya Leaders Alliance v A-G Belize* [2015] CCJ 15 (AJ) (BZ), (2015) 87 WIR 178; *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332; *Mohammed v Albert* TT 2006 CA 27 (CARILAW), (31 July 2006); *Nasrudeen v Thompson* (GY HC, 24 March 2013); *Nelson v Nelson* (1995) 184 CLR 538; *Nicholson v Nicholson* [2024] CCJ 1 (AJ) BZ; *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36; *Pecore v Pecore* [2007] 1 SCR 795; *Persad v Persad* TT 2011 CA 37 (CARILAW), (31 October 2011); *Prest v Petrodel Resources Ltd* [2013] 2 AC 415; *Purba v Purba* [2000] 1 FLR 444; *Radmacher v Granatino* [2011] 1 AC 534; *Rahieman v Hack* GY 1975 HC 24 (CARILAW), (23 May 1975); *Ramdehol v Ramdehol* [2017] CCJ 14 (AJ) (GY); *Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc v A-G of Trinidad and Tobago* TT 2006 HC 36 (CARILAW), (26 May 2006); *Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc v A-G of Trinidad and Tobago* [2009] UKPC 17, (2009) 76 WIR 378 (TT); *Stewart v Stewart* [2013] JMCA Civ 47, JM 2013 CA 127 (CARILAW); *Supaul v Lalchand* BZ 2017 SC 18 (CARILAW), (25 May 2017); S*upaul v Lalchand* (BZ SC, 29 January 2018); *Supaul v Lalchand* (BZ SC, 29 October 2019); *Tabony v Tabony* BZ 2022 SC 41 (CARILAW), (25 July 2022); *Tebbutt v Haynes* [1981] 2 All ER 238; *TL v ML* [2006] 1 FLR 1263; *Versteegh v Versteegh* [2019] 2 WLR 399; *Vidrine v Vidrine* (BZ CA, 27 January 2011); *Villagrán Morales v Guatemala* (Merits) Inter-American Court of

Human Rights Series C No 63 (19 November 1999); *Webb v Webb* [2020] UKPC 22, [2020] 5 LRC 465.

Legislation referred to:

Australia – Property (Relationships) Act 1984 (NSW); **Barbados** – Family Law Act, Cap 214; **Belize** – Belize Constitution Act, CAP 4, Married Women's Property Act, CAP 176, Supreme Court of Judicature Act CAP 91; **Canada** – Family Law Act RSO 1990, c F.3; **Guyana –** Married Persons (Property) Ordinance 1904, Married Persons (Property) Act Cap 45:04; **Jamaica** – Property (Rights of Spouses) Act, 2004; **New Zealand** – Property (Relationships) Act 1976; **Trinidad and Tobago** – Cohabitational Relationships Act Chap. 45:55; **United Kingdom** – Married Women's Property Act 1882 (45 & 46 Vict c 75), Married Women (Restraint Upon Anticipation) Bill, HL Deb 05 July 1949, vol 163 cols 894-918; Senior Courts Act 1981.

Treaties and International Materials referred to:

Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319; Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; UN Committee on the Elimination of Discrimination against Women, 'Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined Third and Fourth Periodic Reports of States Parties, Belize' (26 September 2005) CEDAW/C/BLZ/3-4; UN Committee on the Elimination of Discrimination against Women, 'Concluding comments of the Committee on the Elimination of Discrimination against Women: Belize' (10 August 2007) CEDAW /C/BLZ/CO/4

Other sources referred to:

Albert R, 'Decolonial Constitutionalism' (2025) 25 Chi J Int'l L (forthcoming 2025); Bernard D, Judge of the Caribbean Court of Justice, 'Employing Strategies to Combat Violence Against Women' (Ministry of Community Development, Culture and Gender Affairs Distinguished Lecture and Workshop Series, Port of Spain, Trinidad, 26 September 2005); Berns S, 'Women in English Legal History: Subject (Almost), Object (Irrevocably), Person (Not Quite)' (1993) 12 U Tas L Rev 26; Blackham A, 'The Presumption of Advancement: A Lingering Shadow in UK Law?' (2015) 21(7) Trusts & Trustees 786; Briggs M and Hayward A (eds), *Research Handbook on Family Property and the Law* (Edward Elgar Publishing Ltd, 2024); Chevalier-Watts J, 'The Presumption of Advancement: Is It Time to Relegate This Doctrine to the Annals of History' (2016) 2 Lakehead LJ 15; Cook R J (ed), *Frontiers of Gender Equality: Transnational Legal Perspectives* (University of Pennsylvania Press 2023); Ewick P and Silbey S S, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998);

Fredman S, 'Substantive Equality Revised' (2016) 14 ICON 712; *Halsbury's Laws of England* (5th edn, 2019) vol 24A; *Halsbury's Laws of England* (5th edn, 2020) vol 12A; *Halsbury's Laws of England* (5th edn, 2024) vol 96; 'Justice Through a Gender Lens: Gender Equality Protocol for Judicial Officers' (Belize Judiciary 2018); 'Justice Through a Gender Lens: Gender Equality Protocol for Judicial Officers' (Judicial Education Institute Trinidad and Tobago 2018); Lazarus-Black M 'The (Heterosexual) Regendering of a Modern State: Criminalizing and Implementing Domestic Violence Law in Trinidad' (2003) 28(4) Law & Social Inquiry 979; Lazarus-Black M, 'The Rites of Domination: Practice, Process and Structure in Lower Courts' (1997) 24 American Ethnologist 628; Lazarus-Black M, *The Rite of Domination, Tales from Domestic Violence Cour*t (St Augustine Unit, Centre for Gender and Development Studies, University of the West Indies 2002); Lord Wilson, Justice of the Supreme Court of the United Kingdom, 'Out of His Shadow: The Long Struggle of Wives under English Law' (The High Sheriff of Oxfordshire's Annual Law Lecture, 9 October 2012); Matthews J Z and Amoah J (eds), *Securing Equality for All in the Administration of Justice: Proceedings of the Caribbean Judicial Dialogue* (Faculty of Law University of the West Indies, Mona 2019); Nettleford R, 'The Cultural Aspects and Societal Implications of Human Rights Legislation: Particularly in the Caribbean Context' (Human Rights Caribbean Symposium, Cayman Islands, September 2001) 4; *Oxford Advanced American Dictionary* (2024) < https://www.oxfordlearnersdictionaries.com/definition/american_english/jurisdiction > accessed 2 October 2024; 'Report of the Race Relations Board for 1966-67' (HMSO, 1967); Robinson T, 'Family Property Regimes in the Caribbean' (2001) 11 Carib L Rev 295; Robinson T, 'Gender, Equality, Justice and Caribbean Realities: The Way Forward', (Caribbean Association of Judicial Officers Conference, Barbados, September 2013); Robinson T, 'New Directions in Family Law Reform in the Caribbean' (2000) 10(1) Carib L Rev 101; Robinson T, 'The Properties of Citizens: A Caribbean Grammar of Conjugal Categories' (2013) 10(2) Du Bois Review 425; Robinson T, 'Remaking Family Property Law in the Anglo Caribbean' in Margaret Briggs and Andy Hayward (eds), *Research Handbook on Family Property and the Law* (Edward Elgar Publishing Ltd, 2024); Scobie M, 'The Caribbean Court of Justice and Regionalism in the Commonwealth Caribbean' (2016) 4(1) Carib J Int'l Rel & Diplo 93.

JUDGMENT

Reasons for Judgment:

Disposition [209]

BARROW J:

Introduction

[1] Mr Gulab Lalchand appeals the decision of the Court of Appeal upholding the orders of the High Court in favour of Ms Rutilia Supall in these family law proceedings, which arose from the separation of these parties to a common law union. He appeals primarily on the ground that the court lacked jurisdiction to make the orders.

[2] The orders were in respect of properties being shares in a limited liability company and title to a parcel of registered land. At the time of the proceedings, title to each was held respectively in the names of the Lalchand children and in the name of the seller of the land. None of the title holders were a party to the proceedings. Mr Lalchand's case, in the main, is that the High Court had no jurisdiction to make orders regarding the properties without the title holders being parties to the proceedings. However, the grounds of appeal challenge jurisdiction in a wider sense.

Parties and Subject Matter

[3] The proceedings were commenced by originating summons[1] pursuant to ss 148E and 148H of the Supreme Court of Judicature Act.[2] Rutilia Olivia Supall was the Applicant and Gulab Lalchand was the Respondent.[3] Named respectively as the First to Fourth Interested Parties were Nimmi Lalchand, Miriany Lalchand, Demi Lalchand, Demi Lalchand (as Trustee for Hitesh Lalchand) and Benzer

[1] Action No 17 of 2016, as variously amended.
[2] Rev Ed 2011, CAP 91 ('SCJ Act').
[3] At first instance Mr Lalchand was the Respondent. On appeal Ms Supall became the Respondent. Therefore, it avoids confusion to refer in this judgment to the parties mostly by their surnames.

International Co Ltd as the Fifth Interested Party. The named natural persons were the children of Mr Lalchand. The limited liability company (hereafter 'Benzer') was the entity whose shares were transferred by Mr Lalchand to his children and the entity in whose name the two parties formerly conducted a business operation. Benzer was originally named as the Second Respondent to the originating summons but, on its application to the High Court, was struck out as a substantive party and was named as the Fifth Interested Party.[4]

[4] The subject matter of the dispute was the parties' title or rights in respect of property following the separation of the parties to the union. Power is given by s 148E of the Supreme Court of Judicature Act to make a declaration of the title or rights in respect of property and also to alter the interests and rights of a party to a common law union upon the separation of the parties. In material parts the section reads:

> 148E – (1) Where the parties to a common-law union separate, then either party to the union may thereafter make application to the court for a declaration of that party's title or rights in respect of property acquired by the parties or either of them during the subsistence of the union.
>
> (2) In any proceedings under subsection (1) of this section, between the parties to a common-law union in respect of the existing title or rights to property, the court may declare the title or rights, if any, that a party has in respect of the property.
>
> (3) In addition to making a declaration under subsection (2) of this section, the court may also in such proceedings make such order as it thinks fit altering the interests and rights of the parties to the union in the property, including,
>
> (a) …
> (b) …
>
> (4) …
>
> (5) …

[4] (BZ SC, 29 January 2018).

(6) Where the court makes an order under subsection (3) of this section, it may also make such consequential orders in respect thereto, including orders as to sale or partition, and interim or permanent orders as to possession, and may further order that any necessary deed or instrument be executed, and that such documents of title to the property be produced or such other things be done as are necessary to enable the court's order to be carried out effectively, or that security be provided for the due performance of an order.

(7) Any order made by the court under this section shall be binding on the parties to the union, but not on any other person.

The High Court Decision

[5] The High Court found that the parties had been involved in a common law union for just over eight years, from August 2007 to October 2015.[5] During that time, on 4 July 2011, the parties entered into an agreement (hereafter 'the Agreement') 'to divide the properties mentioned herein between themselves in an amicable and mutual fashion unless superseded by any order of the court.'[6] As it turned out, the union continued some four years beyond the date of the Agreement.

[6] The High Court interpreted the Agreement to enable the court to decide what properties were disposed of by the Agreement and, therefore, placed beyond the determination by the court of title or rights in property. It also decided what properties were not captured by the Agreement. This latter category of properties was, therefore, determined to be subject to the court's adjudication in the exercise of the jurisdiction conferred by s 148E(2) of the Supreme Court of Judicature Act[7] to declare title or rights in respect of property. However, the court went beyond this jurisdiction conferred in s 148E(2) and it made an order, in the exercise of the jurisdiction conferred by s 148E(3), by which it altered the interests and rights of Mr Lalchand in properties to which Ms Supall had no interests or rights.

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[5] BZ 2017 SC 18 (CARILAW), (25 May 2017).
[6] *Supaul v Lalchand* (BZ SC, 29 October 2019) at [13].
[7] ibid at [16].

[7] Mr Lalchand appeals the determination that he was the beneficial owner of Parcel 2081 Block 1 Corozal North Registration Section (referred to as the 'Venezuela Site property' or 'home'), and that he was the beneficial owner of 9000 shares in Benzer notwithstanding his transfer of the 10,000 shares of the company into the names of his children. It was based on that determination that the court made the order altering interests and rights in the land and shares (hereafter 'the alteration order').

[8] The court was clear as to the title and rights in the properties because it first dismissed Ms Supall's claim for beneficial ownership of shares in Benzer. It also found that Mr Lalchand had validly transferred the shares in Benzer to his children. It went on to find:[8]

> (iv) Notwithstanding the transfer of legal ownership of the shares the Respondent [Mr Lalchand] retains beneficial ownership of the shares assessed by the court at not less than 51% of the total shares issued;
>
> (v) Shyam Armanani holds the legal title to the Venezuela Site home, however, the Respondent [Mr Lalchand] holds a beneficial interest in this property of not less than 51% of the value of the home;
>
> (vi) The Applicant [Ms Supall] does not hold a beneficial interest in the Venezuela Site home.

[9] After making those declarations, in the exercise of the jurisdiction conferred by s 148E(3) the court went on to decide that it was just and equitable to order Mr Lalchand to pay money for the benefit of Ms Supall.[9] As the court observed, it did not know the state of the title to the properties so it decided it was best to order the payment of a sum of money in place of a transfer in specie.[10] The court ordered Mr Lalchand to pay the sum of BZD240,000 to Ms Supall and stipulated the time and manner for payment. As will be discussed below, the court did not

[8] ibid at [61] subpara 4.
[9] ibid at [52].
[10] ibid.

purport to make any order that affected the titles of any of the non-parties in either property.

Decision of the Court of Appeal

[10] By a majority decision, the Court of Appeal upheld the decision of the High Court and the declarations made by the trial judge. In a straightforward review, the Court of Appeal decided that the trial judge did not vary or disregard the terms of the Agreement but upheld the specific terms of it. The court also decided that the trial judge was entitled to make a finding of fact based on the evidence adduced at trial that the Appellant had a beneficial interest in the shares of Benzer and that the court was not minded to interfere with this finding of fact. In relation to the Venezuela Site property, the Court of Appeal thought that though this was legally in the name of a third party this did not prevent the court from deciding, based on the facts before it, that the Appellant had a beneficial interest in the said property. The Court of Appeal also held that the trial judge had the authority to place an estimated value on the assets, based on the evidence before the court.

The Grounds of Appeal

[11] The grounds of appeal may be paraphrased as follows:

i. The Court of Appeal erred in law in holding that the court had jurisdiction under s 148E(3) of the Supreme Court of Judicature Act ('SCJ Act') to make a property alteration order and to, therefore, declare that the Appellant was the beneficial owner of the Venezuela Site home when the legal owner, Shyam Armanani, was not a party to the claim and Ms Supall failed to plead that Mr Armanani held the property in trust for Mr Lalchand.

ii. The Court of Appeal erred in law in holding that the court had jurisdiction under s 148E(3) of the SCJ Act to make a property alteration order and to,

therefore, declare that the Appellant was the beneficial owner of the 9,000 shares held by the third parties (the First to Fourth Interested Parties) in Benzer when the latter were not parties, and it was not pleaded that they were trustees for the father.

iii. The Court of Appeal erred in law in their interpretation of the Agreement in concluding it did not include the shares in Benzer and this finding was against the weight of the evidence.

iv. The Court of Appeal erred in law in finding that the court had jurisdiction to make orders in addition to and/or superseding the terms of the Agreement in relation to the shares in Benzer and the Venezuela Site property and had jurisdiction to determine the value of these properties in circumstances where there was little to no evidence before the court as to their respective values.

[12] It becomes apparent, as the grounds of appeal reflect and from the discussion they generate, that Mr Lalchand continues to challenge the decisions of the High Court as distinct from those of the Court of Appeal. His appeal against the decision of the Court of Appeal is not against what they reasoned and pronounced but against the upholding of the findings and decisions of the High Court. In real terms, Mr Lalchand (again) appeals against the High Court reasoning and decision.

Jurisdiction

[13] As indicated, the core of Mr Lalchand's appeal is jurisdiction. He claims that the High Court had no jurisdiction in respect of the properties because the legal owners of the properties at the time of the proceedings were not joined as parties. The claim is buttressed by the argument that the court's jurisdiction is limited to proceedings '… in respect of the *existing* title or rights to property …'[11] He argues that Ms Supall failed to obtain a declaration of any existing interest of Mr

[11] SCJ Act (n 2), s 148E(2).

Lalchand in the properties before bringing the underlying proceedings. Therefore, he argues, at the time of bringing the application, there was no existing title or right to property upon which the court could adjudicate. In that way, he seeks to strengthen the objection to jurisdiction.

[14] The sense in which Mr Lalchand uses 'jurisdiction' accords with its ordinary meaning, given in the *Oxford Advanced American Dictionary* as 'the authority that an official organization has to make legal decisions about someone or something'[12] and this includes the extent of that power. The Appellant is not saying the court did not have the power to make a legal decision as to title or legal interests in a company's shares or a parcel of land. There is no hint of that and, indeed, the opposite appears.

[15] Implicitly, what Mr Lalchand is arguing is that the jurisdiction exists but there are conditions or restrictions that are imposed upon a court in its exercise of its jurisdiction. His case, therefore, rests on the premise that the jurisdiction exists. As a general proposition, the Court accepts the Appellant's argument that the exercise of jurisdiction by courts is subject to conditions and restrictions and this is confirmed by reference to any standard text, such as *Halsbury's Laws of England*.[13] In the present case, counsel has left the Court to infer that consistent with procedural fairness and natural justice, the High Court should have declined to exercise jurisdiction over the properties because it did not have before it, as parties, the persons who were the legal owners of the properties in issue.

[16] The inference must have seemed obvious to counsel, who did not expound for the benefit of the Court on why the title holders needed to be made parties. Had there been an examination of the legal basis for requiring that a given person should be a party before the court, it would have been realised that this is a matter of legal

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[12] 'Jurisdiction' Oxford Advanced American Dictionary (2024) < https://www.oxfordlearnersdictionaries.com/definition/american_english/jurisdiction > accessed 2 October 2024.
[13] *Halsbury's Laws of England* (5th edn, 2019) vol 24A. These may include limitations imposed by statute, charter or commission and, it may be added, by practice and the basic obligations of justice.

policy.[14] The applicable principle of legal policy is embodied in the centuries-old maxim *audi alteram partem* (hear the other side).[15] *Halsbury's Laws of England* explains:

> Legal policy is not confined to the operation of legislative texts, but applies throughout the law. It consists of the collection of principles which the judges consider the law has a general duty to uphold. It is akin to public policy, and may indeed be regarded as its legal aspect.[16]

[17] Therefore, it is for the judge hearing a case to decide, as a matter of legal policy, whether the court should hear a person. As part of that decision, it is for the court to decide the extent to which that person will be allowed to participate. In the present proceedings, it was revealing to observe the extent to which the Interested Parties participated because this dimension, with its implications, was not highlighted in the submissions. It emerges that the Interested Parties participated as fully as if they had been named as Respondents. It was notable to see that there were 'Closing Submissions' filed with the court by their attorneys-at-law. And, as well, to observe that in the rulings and decisions issued by the court, including the decision under appeal, the listing of the attorneys-at-law who appeared included their attorneys-at-law, along with those for the parties. The fulness of the participation of the Interested Parties resounded with observing the award of costs made in their favour against Ms Supall. It is difficult to see what further participation by them was possible.

[18] The participation of Mr Shyam Armanani, the title holder of the Venezuela Site home, was not as fulsome but it was ample. He swore an affidavit which was filed on behalf of Mr Lalchand, and he gave oral evidence. His evidence was the subject of detailed findings by the court in arriving at its decision. It is not difficult to see why the court did not believe his assertion that he remained the beneficial owner of the property which Mr Lalchand had been occupying, for which Mr

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[14] *Halsbury's Laws of England* (5th edn, 2024) vol 96, para 711.
[15] *Boswel's Case* (1605) 6 Co Rep 48b; 77 ER 326 at 331.
[16] *Halsbury's Laws of England* (5th edn, 2024) vol 96, para 698.

Lalchand had paid BZD63,481.70 to discharge the mortgage and had paid substantial sums to renovate. While only peripheral to the point in issue, his evidence serves to demonstrate that Mr Armanani was heard. He asserted his beneficial ownership of the Venezuela Site home. Legal process was satisfied. It is difficult to see what purpose would have been served by any greater participation by Mr Armanani.

Judgment Between Parties

[19] Beyond the absence of any violation of legal process there is the other fundamental point that, in any case, no right or interest of either the Interested Parties or Mr Armanani was affected by the court's decision. Implicated here is the difference between decisions *in personam* (now rephrased as 'between parties') and decisions *in rem*. The former refers to the judgment of a court that is intended to affect only the parties to the litigation. An example of this is where A owes money to B, C and D. If B, alone, sues A and obtains a judgment against A. That judgment *in personam* affects only the parties to it. It has no effect in favour of or against any other person. Thus, C and D, to whom A is equally indebted, have no right to enforce the judgment against A. The judgment in favour of B gives no one else a right to enforce it.[17]

[20] In contrast, a judgment *in rem* binds all persons because it is a judgment that operates upon or in relation to a *res* or thing. Thus, in a land law claim between A and B, a judgment declaring that B holds title to land may be relied on not just by B against A, the defeated rival claimant of the land. The judgment may be relied on by strangers to the claim in which it was pronounced. Thus, a third party may resist a later claim by A, who continues to purport to hold title to the land, by relying on the judgment obtained by B declaring that A did not hold title. That, as a matter of law, is the effect and nature of a judgment *in rem*.

[17] In this hypothetical scenario, issues of separate and joint obligations and the relationship between the creditors are to be ignored.

[21] The exposition is rendered in textbook language in *Halsbury's Laws*[18] which states:

> A judgment in rem (that is, a judgment of a court of competent jurisdiction determining the status of a person or thing, as distinct from a particular interest in it of a party to the litigation) is conclusive of the facts or state of things actually decided or effected; and is conclusive against all persons, whether parties, privies or strangers to the decision. Other judgments which affect the interests of the parties rather than their status, often referred to as judgments in personam (or judgments between parties), have the effect that the parties to them and their privies are prevented from denying what the judgment itself establishes, and the grounds upon which it was founded; but, save to prove their existence, date and consequences, such judgments are generally inadmissible for or against strangers (footnotes omitted).

[22] Consistent with this recognition, the Supreme Court of Judicature Act provides that a judgment shall be binding only on the parties to the proceedings in which it was issued. Section 148E(7) of that Act provides that: '(7) Any order made by the court under this section shall be binding on the parties to the union, but not on any other person.' This subsection puts it beyond doubt that the decision of the court is a judgment *in personam* (or between parties). It binds the parties and does not bind non-parties. The trial judge, Griffith J, in this protracted litigation commendably recognised this feature at an early stage and acted accordingly. Apparently, it was clear to her that it was an *in personam* decision she would be rendering and, therefore, that what she decided as between the parties would not affect any other person ie, the title holders. As previously observed, the judge stated that she was ignorant about the state of title to the properties and would not make an order that would affect title.[19]

Joinder

[23] The recognition of the nature of the decision also puts to rest the argument that the court should have declined to exercise jurisdiction to hear the proceedings because third-party rights could have been affected and they should, first, have

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[18] *Halsbury's Laws of England* (5th edn, 2024) vol 12A, para 1561.
[19] See (n 11) above.

been joined. As discussed, the judge ensured that third-party rights would not be affected by the orders that were within her contemplation. Hence, there was no need to protract the proceedings even more by a formal joinder of title holders.

[24] Rule 19.8A of the UK CPR provides a further example of the competence of a court to determine rights in a subject matter without first joining third parties who could be affected by its decision. The rule is referred to not as authority but purely as demonstrating the underlying concept. By that rule, in any claim relating to the estate of a deceased person or to property subject to a trust or to the sale of any property, the court may at any time direct that notice of any judgment or order be served on any non-party who is or may be affected by it.[20] If served, that person will be bound by the judgment as if he were a party.[21] This confirms the commonplace – that a court may make orders that affect non-parties without first joining them. The justice of making such an order is that the court may later join them, if this is required.

[25] Two decisions on which Mr Lalchand relied are rendered moot by the decision that there was no need to join the title holders. Neither *TL v ML* (Ancillary Relief: Claim Against Assets of Extended Family)[22] nor *Fisher Meredith v JH* (Financial Remedy: Appeal: Wasted Costs)[23] advances the Appellant's argument that joinder was a condition precedent to the exercise of jurisdiction. From *TL v M*L, counsel cited Mostyn J as follows:

> [36] In my opinion, it is essential in every instance where a dispute arises about the ownership of property in ancillary relief proceedings between a spouse and a third party, that the following things should ordinarily happen:
>
> (i) the third party should be joined to the proceedings at the earliest opportunity;
>
> (ii) Directions should be given for the issue to be fully pleaded by points of claim and points of defence;

[20] CPR 19.8A(1), (2).
[21] CPR 19.8A(8)(a).
[22] [2006] 1 FLR 1263.
[23] [2012] 2 FLR 536.

(iii) …

(iv) …

In the latter case, *Fisher Meredith*[24], Mostyn J stated that where a claimant says that a property held by a third party was the property of the Respondent, there was a clear obligation to apply to join the third party at an early stage and seek to invoke the discipline in the previously cited decision.[25]

[26] The facts of those two cases readily distinguish them from the present appeal. In *TL v ML*[26] the wife had petitioned for divorce and had applied for maintenance pending suit. The issues raised included the extent of the husband's assets and in particular his ownership of a property in which the parties had resided, title to which was in the name of the husband's brother. At the interim stage when this application was made, it was clear that the wife had not yet settled upon what she would claim. At a preliminary hearing she was permitted to amend her claim to include a property adjustment order in respect of the property and the brother was given permission to intervene. It was in this context that Mostyn J made the statement[27] about joining third parties at an early stage. This, he said, was so the parties could know whether or not the property in question falls within the dispositive powers of the court and the expensive attendance of third parties for the entire duration of the trial could be avoided. The judge regretted that those steps had not taken place because, he believed, a great deal of costs would have been saved.

[27] That case had nothing to do with joinder of a party to give jurisdiction to the court over property. It concerned the stage at which to join a third party when it was clear that there would be an issue between a claimant and the holder of the title to property in respect of which the claimant would be making a claim, such as a

[24] *Fisher Meredith* (n 23).
[25] ibid at [43].
[26] *TL v ML* (n 22).
[27] ibid at [37].

claim for an occupation order or a property adjustment order. Similarly, the *Fisher Meredith* case had nothing to do with joinder of a party to found jurisdiction. That case concerned whether it was professional negligence for solicitors to have failed to join a party. Mostyn J set aside a wasted costs order against the solicitors who had failed to join a third party because, he found, the situation differed from the earlier case of *TL v ML*. In that earlier case, it had been the duty of the claimant to join a third party against whom they were making a claim. In the later *Fisher Meredith* case, where it was the Respondent who was claiming that property, to which he had legal title, was beneficially owned by a third party, the duty to join the third party fell upon the Respondent and the non-legal owner, and not on the claimant.

[28] In both cases there would or could be an issue *between* the claiming spouse and the third-party owner. In both cases, the claiming spouse would or, hypothetically, could be asserting against the title holder entitlement to possession or to an adjustment or some other order giving her a legal interest in the property. In the instant proceedings, as the actual outcome puts beyond argument, there was no issue *between* Ms Supall and the title holders, even if it initially appeared there would be. Therefore, there was no need to join them.

[29] Before parting with *TL v ML*, attention should be drawn to its clear statement that the court can adjudicate in ancillary relief proceedings on a dispute between a spouse and a third party as to the beneficial ownership of property. The English court accepted earlier judicial pronouncement[28] that in such proceedings a judge ought to decide what are the rights and interests of all parties, not only of an intervenor, but of the husband and wife respectively in the property. As the court held, the judge can only make an order for transfer to the wife of property which is the husband's property. The judge cannot make an order for the transfer to the wife of someone else's interest. The practical sense of that course is not affected by the fact that the legislation then being considered was the UK Matrimonial

[28] ibid at [33], *Tebbutt v Haynes* [1981] 2 All ER 238 at 241(Lord Denning MR).

Causes Act 1973 and that the issue discussed was the transfer of property to a wife. This is because the jurisdiction of the High Court of Belize was in terms similar to that of the English court, namely, to settle all matters in controversy between the parties.[29]

[30] This disposes of the objection that it was fatal to the claim of Ms Supall, that she had not sought a declaration of Mr Lalchand's beneficial interest in the properties before bringing her claim. As *TL v ML* makes clear, all issues concerning the property can be dealt with in the same proceedings. This avoids the existence of satellite litigation involving different parties but concerning the same issue of title to the same property – it avoids the multiplicity of proceedings. The simple fact is that it is a matter of case management for a court to decide whether it will combine in one proceeding various claims[30] or require them to be heard in separate proceedings. The court undoubtedly has the jurisdiction to do either.

Locus Standi

[31] An aspect that should be considered to guide the conduct of future cases and appeals is the issue of what gave this Appellant the right or competence to challenge the exercise of jurisdiction by the court. He had no legal interest in the fact that the title holders were not joined as parties nor in the state of the pleadings in relation to them. Manifestly, the title holders have participated as fully as if they had been named as parties. Indeed, it must be considered that if they had been named as Respondents it would have been appropriate for the court, as a case management decision, to have dismissed them as such – even as the court dismissed Benzer as a party. No relief was claimed against any of them. Ms Supall had no cause of action in relation to them.

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[29] See Senior Courts Act 1981 (UK) s 49(2) which requires the court to exercise its discretion to ensure that: 'as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of those matters is avoided.' cf SCJ Act, CAP 91, s 38 (BZ) imposing the mandate in similar language.

[30] In this scenario the court can order the trial of a preliminary issue, if it considers this sensible.

[32] Therefore, why should Mr Lalchand be allowed to object to the court's exercise of jurisdiction on the ground that persons who deliberately chose not to intervene to become parties were not parties? Their failure to apply to become parties was raised in oral argument. Counsel for Mr Lalchand was asked by the bench why the title holders did not seek to intervene, given that they were named as interested parties and Mr Armanani had participated as a witness in the proceedings. Counsel confirmed, in response, that counsel had no authority to speak on behalf of the title holders.

[33] That response evoked the corollary: neither did counsel have authority to object to the court's exercise of jurisdiction because of the non-joinder. As a matter of law, as has now become evident, Mr Lalchand lacked authority to make that objection on behalf of the title holders. Equally, Mr Lalchand lacked the competence to make that objection on his own behalf. In legal terms, Mr Lalchand's lack of competence or authority is described as a lack of standing. He did not have sufficient interest, or standing, in the issue or subject matter that he was purporting to litigate. That issue was the lawfulness of the exercise of jurisdiction by the court to decide rights in property without joining as parties the third-party title holders. The standing to object to the exercise of jurisdiction – if that objection were available – belonged to the title holders, not Mr Lalchand.

[34] *Nicholson v Nicholson*[31] is a recent decision also from Belize where the Appellant prosecuted an appeal in which he lacked standing. This Court found that it was not permissible for a son, the Appellant, to assert that the legal ownership of property was vested in his mother and to seek by that assertion to defeat the claim of his sister. This was especially so when the mother admitted the sister's claim that the property had lawfully been devised to the sister. As the Court decided, the son lacked the standing to argue that the mother held the legal ownership, and to argue that their deceased father did not have the legal right to devise the property. The principle applies in the instant case: a party in legal proceedings is

[31] [2024] CCJ 1 (AJ) BZ at [234].

not permitted to assert the supposed rights of another person. The law requires that the other person must assert their rights.

[35] Mr Lalchand's objection to jurisdiction must be dismissed. So too must his submissions about pleadings and claims for relief in relation to the title holders.

Interpretation of the Agreement

[36] Both grounds of appeal challenging the court's interpretation of the Agreement of July 2011 were directed to whether it 'covered' the shares in Benzer, and so placed those beyond the jurisdiction of the court. The Appellant's case was that the agreement settled as between the parties the ownership of the shares in Benzer and, therefore, the High Court erred in dealing with the claim to the shares. The error is stated to be both a matter of law and of fact. The error of law was said to be that the Agreement should have been interpreted as an ordinary contractual document and the judge failed to do that. The error of fact was said to be that the decision was against the weight of the evidence.

[37] It considerably reduces the ambit of the consideration that these grounds require to observe at an early stage that the only award the court made in favour of Ms Supall in relation to the shares in Benzer and the Venezuela Site property was made as an order for the alteration of property. This was in exercise of the jurisdiction conferred by s 148E(3),(4) and (5) of the Supreme Court of Judicature Act. The High Court considered in detail the claim for an interest in the shares and the Venezuela Site home and declared that Ms Supall had no beneficial interest in these properties. Therefore, the court decided, it was only pursuant to the alteration of property provisions of the Act that Ms Supall could possibly obtain any interest in respect of property acquired during the union.[32]

[32] *Supaul* (n 6) at [49] – [50].

[38] The thrust of the Appellant in arguing about the interpretation of the Agreement is that on its true interpretation it put the Benzer shares beyond the court's jurisdiction. The Appellant insists that the Agreement was in full and final settlement of the claims to property. He maintains, as stated in his written submissions, that the Agreement was signed in contemplation of the parties 'going their separate ways or at least agreeing to a *division of assets* in the event they so separated'. The Agreement, he submitted, 'was to be a settlement as to the *division of properties* acquired during the union. …' (emphasis added).

[39] The Appellant stays focused on the division of assets or division of properties. He remains caught up with the exercise of power given to the court to 'declare the title or rights, if any, that a party has in respect of the property' acquired by the parties or either of them during the subsistence of the union. This is the exercise for which s 148E(2) provides. But, he says, this exercise was not open to the court because the Agreement excluded the property it covered from being divided pursuant to that subsection.

[40] The Appellant's focus is unavailing because, using as her reference the decision of the Belize Court of Appeal in *Vidrine v Vidrine,*[33] the judge conducted a thorough exercise[34] to decide whether Ms Supall had any title or rights in the particular properties and concluded that she had none. The persistence of the Appellant in arguing that the judge erred in interpreting the Agreement as permitting the court to consider giving an interest in the Benzer shares to Ms Supall is misdirected. This is because, although the judge found the Agreement did not exclude the Benzer shares from being considered on a division of property, the judge found that Ms Supall had no beneficial interest in either the shares or the Venezuela Site home and refused to order a division of property.

[41] That result is hardly different from what would have been the position if the judge had upheld the submissions for the Appellant and found that the Agreement

[33] (BZ CA, 27 January 2011).
[34] *Supaul* (n 6) at [42].

'covered' the Benzer shares. Such a hypothetical finding would have excluded, by agreement, the shares from any claim to a beneficial interest by Ms Supall. The actual finding by the judge has done very much the same thing. On both scenarios, the shares were solely the property of Mr Lalchand – leaving aside, for purposes of the present discussion, the transfers to the children. It is precisely because the shares were the sole property of Mr Lalchand that the judge proceeded to consider making an alteration of property order.

[42] Counsel have not submitted that if the shares were 'covered' by the Agreement the court would have been prevented from making the *alteration* of property order. Counsel have confined themselves to arguing that if 'covered', the court would not have been able to *divide* the shares. There is no need to discuss a submission which was not made. For now, it is enough to observe that, contemporaneously with the underlying proceedings, the Belize High Court in *Tabony v Tabony*[35] decided that a prenuptial agreement did not preclude the court from making a property adjustment order in the exercise of its jurisdiction under s 148E(3).[36]

[43] *Vidrine*[37] confirmed the power of the court to alter rights in property owned solely by the husband. In that case the husband had paid for properties acquired during the union, to which the wife made no financial contribution but to which she made non-financial contributions. The Court of Appeal decided the wife's contributions, considered along with the factors specified in the legislation, made it just and equitable to make an order altering rights in the properties. In the instant case, in reaching the decision to make the alteration of property order, the judge thoroughly considered the relevant facts as found by her. The judge then considered these in combination with the factors detailed in the section to be considered to ensure a result that was 'just and equitable'.[38] *Vidrine* was closely followed by the judge as an authoritative guide to conducting the necessary

[35] BZ 2022 SC 41 (CARILAW), (25 July 2022).
[36] Ibid at [90].
[37] *Vidrine* (n 33).
[38] ibid.

exercise.[39] It is pivotal that the Appellant has not appealed the merits of the property adjustment order. Not once did the submissions for the Appellant discuss the fact that it was a property adjustment order that the court made pursuant to sub-s 148E(3), which confers jurisdiction on the court to make such an order. Nor was the precedent of *Vidrine* acknowledged for its contribution to the jurisprudence on the making of a property alteration order.

Alteration of Rights in Property

[44] Brief attention is now given to ss 148E(3) – (5), which are the provisions of the Act relevant to the alteration of rights in property, pursuant to which the court made the orders which Mr Lalchand wishes to set aside. Section 148E states in material parts:

> (3) In addition to making a declaration under sub-section (2) of this section, the court may also in such proceedings make such order as it thinks fit altering the interests and rights of the parties to the union in the property, including–
>
> (a) an order for a settlement of some other property in substitution for any interest or right in the property; and
>
> (b) an order requiring either or both parties to the union to make, for the benefit of the other party, such settlement or transfer of property as the court determines.

[45] In subsection (4), it is provided that the court shall not make an order under subsection (3) above unless it is satisfied that in all the circumstances, it is just and equitable to make the order. Subsection (5) provides the factors for the court to consider in deciding whether it is just and equitable to make an order altering rights in property, under subsection (3) above. It provides, the court shall take into account the following,

> *(a)* the financial contribution made directly or indirectly by or on behalf of either party to the union in the acquisition, conservation or

[39] *Supaul* (n 6) at [42]-[43].

improvement of the property, or otherwise in relation to the property;

(b) the non-financial contribution made directly or indirectly by or on behalf of either party to the union in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent;

(c) the effect of any proposed order against the earning capacity of either party to the union;

(d) the age and state of health of each of the parties to the union and the children born from the union, if any;

(e) the eligibility of either party for a pension, allowance, gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid;

(f) the duration of the union and the extent to which it has affected the education, training and development of the party to the union in whose favour the order will be made;

(g) the need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother;

(h) the non-financial contribution made by the female party to the union in the role of companion and/or mother and in raising any children born from the union, if any; or

(i) any other fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.

[46] There is no need to do more than acknowledge that the judge listed and considered each of the criteria stated in subsection (5) that must go into the process of deciding whether it is just and equitable to make a property adjustment order. The judge did this convincingly and no uncertainty comes to mind when reviewing the fairness of the exercise she conducted. Mr Lalchand has not challenged the judge's exercise of discretion. Therefore, there is no need to say more on the

matter. I would dismiss the Appellant's challenge to the interpretation of the Agreement.

Valuation

[47] In his final ground of appeal, the Appellant contends that the judge arrived at a valuation of the properties 'where there was little to no evidence before the courts as to their respective values.' In the written submissions the formulation is made more strongly, with the Appellant contending that 'the judge embarked on a valuation of the said assets when there was no evidence as to the value of the same.' The submission overreaches. This is because the valuations the judge did were based on evidence she clearly stated.

Benzer

[48] The judge valued Mr Lalchand's beneficial interest in the Benzer shares at BZD428,000. The judge arrived at that valuation by considering financial information derived from an incomplete accounting exercise from 2013 to 2014 that was put in evidence by an accountant called by Mr Lalchand. The statements produced showed that Benzer's net income was estimated at just over USD400,000 and its fixed assets estimated at USD2.8 million. The judge acknowledged that there was no information available to the court as to Benzer's liabilities. The judge assumed that the net income would have increased by October 2015 at the time the common law union came to an end. On this basis, the judge ascribed a net income of USD420,000 to Benzer. She therefore decided on a value of BZD428,000 as the 49 per cent beneficial shareholding of Mr Lalchand.

Venezuela Site Home

[49] The evidence considered by the judge in arriving at a value for the Venezuela Site home of BZD500,000 was:

a. A debt of BZD400,000 owed to Benzer by the son of Mr Shyam Armanani was the consideration, as asserted by Mr Lalchand, for his being granted possession of the property.

b. Heritage Bank had taken a mortgage over the property to secure a loan of BZD275,000.

c. Mr Lalchand paid around BZD60,000 to the bank towards the loan.

d. Mr Lalchand had been making monthly payments of BZD1,000 purportedly as rent for the property.

[50] It is not surprising, that in the face of that material, the Appellant made no attempt before this Court to advance his contention that there was no evidence of value before the judge, even while repeating it. He did no more than make the bare submission that the valuations were speculative when they should have been cautious and conservative. He submitted that the Court of Appeal accepted the judge's approach in arriving at a valuation, which relied on *Webb v Webb*[40] but in that reliance the court disregarded the dicta at [103] that it is not permissible for a court to convert open-ended speculation by one party into findings of fact against the other. He ended his submission by repeating the contention that there was no evidence before the Court to find as fact that the shares in Benzer were valued at USD420,000 and the Venezuela Site property was valued at BZD500,000.

[51] The response for Ms Supall is that there was sufficient evidence in the information to which the judge referred as assisting her. This included the mortgage of the Venezuela Site property, the quantum of the debt owed by Mr Armanani's son, and the other figures in her conclusion of the estimated value of the property.

[40] [2020] UKPC 22, [2020] 5 LRC 465.

[52] Similarly, counsel for Ms Supall submits, the value of the shares in Benzer was based on documentation by the Appellant's witness. A lack of a formal valuation does not invalidate the court's valuation of Mr Lalchand's 35 per cent beneficial interest.

[53] The law regarding a court valuing family property where there is a paucity of valuation evidence was well appreciated by counsel and fully discussed by the Court of Appeal. The principal reference to *Webb*[41] and the valuation exercise done in this case requires to be considered against the Appellant's submission that where the decision on the valuation went wrong because the Court of Appeal did not have regard to the statement in that case that '…it is not permissible for a court to convert open-ended speculation by one party into findings of fact against the other…'. The full statement on which the Appellant relies is as follows:

> [103] I would accept that it is not permissible for a court to convert open-ended speculation by one party into findings of fact against the other; there must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities before a court can draw useful inferences from a party's failure to rebut it. In *Prest v Prest* [2013] UKSC 34… *Prest v Petrodel Resources Ltd* [2013] 2 AC 415 (at [44]), Lord Sumption adopted with only minor modification this statement of Lord Lowry in *TC Coombs & Co (a firm) v Inland Revenue Comrs*… [1991] 2 AC 283 at 300:
>
> > "In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party may be either reduced or nullified."

[54] In *Webb* the stricture was against taking open-ended speculation by the claiming party as to value and accepting it as the basis for valuation. In that case, the Privy

[41] ibid.

Council discussed the drawing of adverse inferences against a party who had in his control the information that would permit the court to do a well-informed valuation and chose to withhold it. The principle is stated in the following passage:

> [106] … However, Mr Webb did not disclose the information or documents that would allow the court to look into these matters fully or to quantify their impact. The court therefore had to make a broad estimate of the deduction they called for. It no doubt drew upon its experience and the inherent probabilities in so doing. I therefore feel unable to accept the criticisms made by Mr Webb of its approach. It did the best it could in all the circumstances, and it arrived at a realistic figure. If Mr Webb thinks it was unduly generous to Mrs Webb, he has only himself to blame. Nor can I accept the criticisms advanced by Mrs Webb. A deduction of some kind had to be made and I think the result reached by the Court of Appeal was certainly not unduly generous to Mr Webb.

[55] The passage at [103] of the Webb decision on which the Appellant relies is simply a caution against acting unfairly in reaching a conclusion unfavourable to a non-disclosing party. In the present case, there was nothing speculative or open-ended in the judge using as a departure point for arriving at the value of the Benzer shares the figure provided by the Appellant's witness of USD400,000 as the net value of the company. Similarly, there was nothing open-ended or speculative about the figure of BZD400,000, which was the amount of debt from Mr Armanani's son that the Venezuela Site property was taken to secure or the BZD275,000 mortgage to the bank it had been used to secure. As appears from the principal authorities referred to, a party who can provide relevant information as to value and who chooses not to do so must be prepared to accept a valuation that is less than sympathetic to him, so long as it is not unduly generous to the claiming party.

[56] The written submission for the Appellant rested on the premise that the valuation was speculative when it needed, and failed, to be cautious and conservative. The actual figures on which the judge relied dispel the contention that the valuation

was either open-ended or speculative. Those figures provided a sufficient basis for a judge to draw upon life experiences and a sense of things[42] to arrive at a fair impressionistic even if not arithmetical result.[43] The submission that a judge from whom information is withheld should proceed, for the sake of the recalcitrant party, in a cautious and conservative manner, is quite contrary to the authorities.

JAMADAR J:

Introduction

> *'Legal intervention must be "consonant not only with reason and palpable justice but also with the culture and way of life of so many of our citizens."'*[44]

[57] In Anglo-Caribbean constitutional democracies in which human rights provisions prevail, law is intended to serve the ends of justice. Post-colonial legislative and judicial interventions ought to further this objective, especially where recognition and rights involving historically discriminated persons and groups are concerned. This case, which involves the property rights and responsibilities of persons in common law unions, as they are called in Belize (also referred to alternatively in this opinion as cohabitational relationships), falls squarely into these categories and demands an interpretative approach that fulfils post-colonial legislative and interpretative aspirations.

[58] The legal legitimisation of cohabitational relationships is 'now part of the social construction of the Caribbean and create(s) "expectations, limits, and contingencies for human thought and action" …'.[45] Legislative interventions in

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[42] *Webb* (n 40) at [103], [106].
[43] *Versteegh v Versteegh* [2019] 2 WLR 399 at [86] et seq.
[44] See also Tracy Robinson, 'The Properties of Citizens: A Caribbean Grammar of Conjugal Categories' (2013) 10(2) Du Bois Review 425, 434. See also *Rahieman v Hack* GY 1975 HC 24 (CARILAW), (23 May 1975) at 4 (Massiah J).
[45] Tracy Robinson, 'The Properties of Citizens: A Caribbean Grammar of Conjugal Categories' (2013) 10(2) Du Bois Review 425, 438, citing Patricia Ewick and Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998) 42.

this area are 'a crucial means of doing justice … and remedying previous injustices.'[46] Caribbean historical, sociological, and cultural contexts are the backdrop to the socio-legal developmental project of interpreting and applying the law in this matter.

[59] Professor Tracy Robinson explains the socio-legal context of Caribbean laws that recognise cohabitational relationships, as follows:[47]

> Since 1977, new laws in Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago have constructed men and women in serious cohabiting relationships—like common-law marriage—as rights holders and property-owning citizens who are entitled to treatment similar to those who are married; their dignity is marked by access to the traditional matrimonial courts called the Supreme or High Court…
>
> The new laws are also meant to represent a shift away from colonial legalities that were deemed to be ill-suited for the Caribbean, and to shape new Caribbean nations as modern progressive ones, though distinguishable from the West…(citation omitted).

[60] These 'new laws,' 'provide a noticeably more expansive understanding of what constitutes the Caribbean family', and as well 'demonstrate a keener appreciation … in securing basic human rights, especially those of women and children.'[48] There can be no doubt that throughout the Caribbean judge-led common law developments and legislative interventions in this area are intended to protect, predominantly, the interests of women and children who are parties to cohabitational relationships.[49]

[61] The task at hand is therefore to situate this Belizean social and family law reform legislation in the more general context of Caribbean cohabitational relationships, and to identify the prevailing circumstances which this post-colonial national

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[46] Tracy Robinson, 'Family Property Regimes in the Caribbean' (2001) 11 Carib L Rev 295, 317.
[47] Tracy Robinson, 'The Properties of Citizens: A Caribbean Grammar of Conjugal Categories' (2013) 10(2) Du Bois Review 425, 440-441, citing Mindie Lazarus-Black 'The (Heterosexual) Regendering of a Modern State: Criminalizing and Implementing Domestic Violence Law in Trinidad' (2003) 28(4) Law & Social Inquiry 979.
[48] Tracy Robinson, 'New Directions in Family Law Reform in the Caribbean' (2000) 10(1) Carib L Rev 101, 102.
[49] Tracy Robinson, 'The Properties of Citizens: A Caribbean Grammar of Conjugal Categories'(2013) 10(2) Du Bois Review 425, 433, 435.

legislative intervention is intended to address. Caribbean law does not exist in a vacuum, and legal language and legislation must be placed and interpreted in local social contexts, faithful to legislative intent and purpose. It is sometimes necessary to remind ourselves that law, especially statutory law, is in fact a statement of public policy.[50]

Background

[62] The Appellant and Respondent met around 2006. They both had children from previous relationships and were unmarried. They started dating in early 2007. They began living together and entered into a common law union in August 2007. They were both financially independent, had their own businesses and properties at the time of the commencement of their relationship, and during the relationship provided each other with financial support. It is noted that in the initial stages of the relationship the Appellant was experiencing financial troubles and received increased financial support from the Respondent. During the course of their cohabitation, the parties changed cohabitational location a few times and shared household expenses. Their last place of cohabitation was at 6 North Venezuela site, Corozal, Corozal District ('the Venezuela Property'). This property is one of the main subjects of this appeal.

[63] While cohabiting the parties also jointly engaged in business initiatives. One such initiative was the management of a company named Benzer International Company Limited ('Benzer') which included in its operations a store set up in the Corozal Free Zone ('the Free Zone Business'). Benzer is also one of the main subjects of this appeal.

[50] Adapted from, 'Report of the Race Relations Board for 1966-67' (HMSO, 1967) 22: 'A law is an unequivocal declaration of public policy.'

Cohabitational Agreement

[64] From the early stages of the cohabitational relationship the parties conducted their affairs by negotiating ongoing informal arrangements regarding certain assets acquired during the relationship. For the purposes of formalising these arrangements with regards to the ownership and treatment of these assets and seemingly in anticipation of a breakdown of the relationship, in July 2011 the parties mutually agreed to enter into an agreement, which can be described as a cohabitational agreement. The cohabitational agreement provided for the relocation of accommodation of the Respondent at the expense of the Appellant, the investment (as a repayment) of funds by the Appellant for the Respondent's benefit, the purchase of a vehicle by the Appellant for the Respondent, the transfer of certain properties between the parties, and for periodic payments to be made to the Respondent by the Appellant upon the importation of containers of cigars into Belize. Subsequent to the execution of the cohabitational agreement, the common law union continued for about four years more until 2015.

[65] For the purposes of this appeal, the main provision of the cohabitational agreement in dispute is with regard to payments to be made to the Respondent of BZD2,000 per imported container of cigars by the Appellant into Belize, as the first main substantive subject of this appeal concerns Benzer. However, this is not the only provision that is relevant for the disposition of this matter. The second main subject of this appeal concerns the Venezuela Property. At the time of execution of the cohabitational agreement in July 2011, there was no mention of the Venezuela Property (as it was not yet acquired) or specifically of Benzer, as Benzer was not as yet actually up and running and the Free Zone Business was not as yet in operation.

Benzer

[66] Benzer was acquired in 2009. The trial judge found that the Respondent made an initial financial contribution of approximately BZD20,000 to the acquisition of

Benzer in 2009.[51] Thereafter, by early 2011, arrangements were made to open Benzer's business in the Corozal Free Zone. The Free Zone Business was established in late August to September 2011. The Appellant was a registered director and shareholder, and a third party was the other Director of Benzer. The company was acquired with an initial shareholding of 10,000 shares with the Appellant holding 9,000 shares and the third party holding 1,000 shares. The 1,000 shares held by the third party were eventually transferred to the Appellant's daughter, Nimmi, when she turned 18 in July 2012. The operations of Benzer included the importation of cigars and cigarettes and as per the July 2011 agreement, the Respondent was paid the BZD2,000 per container of cigars/cigarettes.

[67] In September 2015, the Respondent discovered that in May 2015, the 9,000 shares in the Appellant's name had been transferred to his children. This had been done without the Respondent's knowledge. However, in addition to the injection of BZD20,000, the Respondent had also made non-financial contributions to Benzer. In 2011, the Respondent encouraged the establishment of and helped set up the Free Zone Business and was part of the day-to-day running of same, handling sales, dealing with customers etc (managing and running the operations of the company).[52] The Respondent's involvement in the Free Zone Business continued for about four years until she found out about the September 2015 share transfer. At all material times, Nimmi and the other children of the Appellant also assisted in running the Free Zone Business. The Appellant and Respondent separated in October 2015.

Venezuela Property

[68] The success of Benzer lead to the acquisition of the Venezuela Property. Vishal Armanani owed Benzer over BZD400,000 and offered to sell the Venezuela Property to the Appellant and the Respondent to clear off the debts owed to

[51] Supaul (n 6) at [48(ii)].
[52] ibid at [50(b)].

Benzer. The Venezuela Property was in the name of Vishal's father, Shyam Armanani. However, Vishal represented that the property was really his and asked that it be taken in exchange for cancelling debts owed to the business and assured the parties that his father would sign the required paperwork. In or about January-February 2015 and after both the Appellant and Respondent viewed the Venezuela Property, they agreed to the offer. The property was at the time mortgaged originally in the sum of BZD275,000 and held in the name of Shyam Armanani.

[69] Following the agreement about the Venezuela Property, and early in 2015, the Appellant made a payment of over BZD60,000 to the bank towards the mortgage of the Venezuela Property. Also, the Appellant and the Respondent began carrying out renovations which were paid for using monies earned from Benzer. In late August 2015, the renovations were completed and thereafter the Appellant and Respondent, together with the Respondent's younger daughter and the Appellant's son, moved into the Venezuela Property. At all material times, the property remained in the name of Shyam Armanani.

[70] Notwithstanding the above, in about April 2015, the relationship between the Appellant and Respondent became acrimonious, triggered by issues surrounding accusations by the Respondent about the Appellant's infidelity. By the end of October 2015, the relationship had ended, and the Respondent left the cohabitational home at the Venezuela Property. In all, the common law union (cohabitational relationship) lasted a little over eight years.

[71] Before this Court, the substantive matters in contention are whether the orders of the trial judge (upheld by a majority of the Court of Appeal), in relation to the Respondent's interests in Benzer and in the Venezuela Property, can be upheld.

High Court Judgment

[72] The trial judge held that the cohabitational agreement was valid but that the agreement was limited to the properties and matters dealt within it. The trial

judge therefore went on to make orders in regard to assets acquired by the parties during the union that were not covered by the agreement. In relation to Benzer, the trial judge found that the full 10,000 shares were acquired for and on behalf of the Appellant and that the Respondent did not have a beneficial interest in the shares per se. The shares were also found to have been legally transferred to the Appellant's children, but the Appellant retained a beneficial interest of 51 per cent of the total shares in Benzer. In relation to the Venezuela Property, the trial judge declared that the Appellant held a beneficial interest of not less than 51 per cent, though the legal title was vested in Shyam Armanani. The trial judge also determined that the Respondent did not have a beneficial interest in the Venezuela Property.

[73] In making these declarations in relation to Benzer and the Venezuela Property, the trial judge also conducted a valuation of these assets on the available evidence and made a final order that the Appellant pay the Respondent BZD240,000.

[74] Although the trial judge did not have direct evidence as to the value of the Venezuela Property, the following evidence was used to arrive at an estimated value of BZD500,000[53]:

i. The BZD400,000 debt owed to Benzer by Vishal Armanani, son of Mr Shyam Armanani, which was the reason that the Appellant and Respondent went into possession of and undertook renovations to the property;

ii. Approximately BZD60,000 which the Appellant paid to the Heritage bank towards the mortgage on the property;

iii. The mortgage over the property in the amount of BZD275,000; and

[53] *Supaul* (n 6) at [53]-[54].

iv. The purported monthly payments to the property of BZD1,000 paid by the Appellant.

[75] The trial judge held that it was impossible to ascribe the precise value of the Benzer shares without evidence of the company's liabilities. However, the trial judge relied on Benzer's net income based on incomplete financials from 2013 to 2014 which had been adduced as evidence. These statements showed that Benzer's net income was estimated at just over USD400,000 and its fixed assets estimated at USD2,800,000. Based on these facts, the trial judge projected that the net income would have increased by October 2015 at the time the common law union came to an end, and ascribed a net income value of USD420,000.

[76] The trial judge also found that the responsibility for full disclosure of the value of the disputed assets laid in the Appellant and therefore the failure to disclose justified the drawing of an adverse inference and the use of whatever evidence was before the Court to ascribe a value.

[77] The declaration that the Appellant owned a 51 per cent beneficial interest in the Benzer shares and in the Venezuela Property was informed by the following considerations. The trial judge determined that the Appellant's beneficial entitlement in the Benzer shares and in the Venezuela Property were BZD255,000 and BZD428,000 respectively, totaling to BZD683,000. In applying the relative factors set out in s 148E(5) of the SCJ Act[54] , the trial judge determined that the Respondent's non-financial contribution to the business was assessed at 40 per cent and the other factors would add an additional 5 per cent, for a total of 45 per cent. The trial judge then made a downward adjustment of 10 per cent for the BZD2,000.00 per importation of container of cigarettes paid to the Respondent. This resulted in a final entitlement of 35 per cent of BZD683,000, therefore arriving at the order for the Appellant to pay the Respondent BZD240,000.

[54] SCJ Act (n 2).

Court of Appeal Judgment

[78] On appeal and by majority, the Court of Appeal upheld the decision of the trial judge on (i) the validity of the cohabitational agreement and the conclusion that it only covered specific stated cohabitational assets, (ii) the finding that the Appellant had a beneficial interest in the shares of Benzer, (iii) the finding that the Appellant also had a beneficial interest in the Venezuela Property, (iv) the assessment of the Appellant's 51 per cent beneficial interest in Benzer and the Venezuela Property, (v) the Respondent's 35 per cent interest in the Appellant's said beneficial interest, and (vi) the valuations conducted by the trial judge, and that the Court had the authority to place an estimated value on the cohabitational assets based on the evidence and taking into consideration the failure of the Appellant to more fully disclose material evidence as to the value of these assets.

[79] Minott-Phillips JA, in her dissenting judgment, found that this Court's decision in *Ramdehol v Ramdehol*[55] was applicable. That the cohabitational agreement dated 4 July 2011, made in contemplation of the parties' separation, covered in its entirety the division of assets acquired during their cohabitational relationship. She was of the view that the cohabitational agreement was entered into in anticipation of the parties' expected separation and came into full and enforceable effect when that occurred in October 2015.[56]

[80] In relation to the Benzer shares, Minott-Phillips JA also found that the children had both the legal and beneficial interests in the shares. Thus, the Respondent could not obtain an interest in shares as the Appellant did not have any beneficially interest in them. She also found that the trial judge erred in making a declaration of a beneficial interest to the Appellant in the Venezuela Property when the legal owner, Shyam Armanani, was not a party to the proceedings.

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[55] [2017] CCJ 14 (AJ) (GY).

[56] There being no concealment of assets at the time of the drafting and execution of the cohabitational agreement, no evidence of misrepresentation, fraud, undue influence, and no interests of minors or patients to justify setting it aside, applying the learning from *Radmacher v Granatino* [2011] 1 AC 534.

Issues

[81] This appeal invites the Court to consider, interpret, and apply ss 148D to 148G of the SCJ Act. This arises in the context of whether and if so what are the appropriate proprietary declarations and/or property alteration orders that can be made in relation to the parties[57] (i) upon their separation as cohabitants and after living in a common law union for over eight years, (ii) they having entered into a valid contract in relation to some of their cohabitational and property interests, and (iii) this agreement having been made between legally competent, fully informed, and consenting parties of more or less equal bargaining power (and without any procedural irregularities).

[82] The issues that arise in this case may therefore be particularised as follows. First, whether the SCJ Act, which recognises common law unions also intends that cohabitational agreements be taken into account in determining s 148E proprietary interests and property rights. Second, if so, what are the applicable legal principles. Third, whether an applicable principle is that where there is a legitimate cohabitational agreement made between legally competent, fully informed, and mutually consenting parties of more or less equal bargaining power, a court is bound to give effect to its terms. Fourth, if a court is not bound to do so then what is the proper approach. Fifth, whether the trial judge could have made the declarations of beneficial interest in the absence of a pleading of constructive or resulting trusts. Sixth, whether the trial judge could have made declarations and/or orders regarding the beneficial interest of the Respondent in relation to the Benzer shares and the Venezuela Property, given that the legal interests in both were vested in third parties who were not joined to the proceedings (but who had notice of them). Seventh, provided the trial judge could have made the stated declarations and orders, whether on the available evidence the declarations and/or orders made were justified.

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[57] SCJ Act (n 2), s 148E.

[83] To resolve the overarching legal issues, it is necessary to first consider the legal recognition of cohabitational relationships (common law unions) and the prevailing policy to afford protection for women and children in the wider Commonwealth Caribbean, and to then consider these in the specific context of the Belizean legislation. This exercise requires an examination of the legislative frameworks in Barbados, Trinidad and Tobago, Jamaica, Guyana, and Belize, which have all provided for legal recognition of cohabitational relationships, with specific attention to those provisions which may address cohabitational agreements. In Belize, there are no statutory provisions which explicitly legislate for the status and approach to be taken towards cohabitational agreements, it is therefore also necessary to resolve the approach to cohabitational agreements by treating them as a unique, *sui generis*, species of contract in the context of family law, and in particular in the context of cohabitational relationships in Belize. This is in part an exercise of statutory interpretation with s 148E of the SCJ Act as the focal point and also engages broader interpretative considerations of textual analysis, intent of the legislature, precedent, tradition, and policy, all undertaken through gender sensitive lenses.

Summary of Findings

[84] In Belize, legitimate cohabitational property agreements made between cohabitants are a relevant and important factor to be considered in determining s 148E property rights in relation to cohabitational relationships, that is, common law unions. However, such agreements do not oust the jurisdiction of the court to make such declarations and orders that are deemed fit to achieve just and equitable outcomes in the circumstances set out in 148E (5).

[85] Cohabitational agreements must first have contractual integrity. They must be free of all undermining procedural defects, such as fraud, duress, undue influence, misrepresentation, or mistake in order to be considered. As well, they must be made between legally competent, fully informed, and mutually consenting parties of more or less equal bargaining power. Ideally, they should be in writing and

witnessed by independent and reputable persons and be the product of independent legal advice sought and received by each party. Then, and provided these contractual procedural requirements are met, it is then for a court in considering all the s 148E(5) factors to determine: (i) the weight to be given to the cohabitational agreement in the context of the particular relationship, and bearing that in mind, (ii) what are fit and proper declarations and/or orders that will enable and achieve a just and equitable outcome between the parties in relation to their cohabitational property rights and responsibilities. However, such agreements will, *prima facie* and in the ordinary course of things, be afforded due consideration and weight.

[86] This approach is grounded in a purposive interpretation of the relevant sections in the SCJ Act and gives effect to parliamentary intent as reflected specifically in the language of s 148E(5)(i). It balances party autonomy, by having due regard for their wishes as expressed in a cohabitational agreement, with social context realities in the Caribbean at this time and as provided for legislatively, and which require a court to be the final arbiter of what are just and equitable declarations of proprietary interests and/or orders for property division as between cohabitants.

[87] Cohabitational agreements, as a species of contracts, are *sui generis.* They are to be interpreted and applied in the context of family law and cohabitational relationships (and not the other way around). It is the overall fairness, justness, and equity of the declarations of proprietary interests and/or property divisions between the parties in their particular circumstances, that are the focus of the exercise (and not simply whether the agreements arrived at between the parties meet the fairness standards of contract law).

[88] In this context, the autonomy of freely consenting and fully informed parties to

an agreement must also be filtered through the lens of substantive equality.[58] That is, by seeking 'to discover whether [the outcome] is consistent with the inherent value of human dignity and with core principles of fairness and justice', by looking at 'whether there is substantive disadvantage that is related to sex or gender', and with a 'heightened awareness of intersectional discrimination'.[59] In other words, a cohabitational agreement must be viewed through a gender sensitive lens.

[89] Let us remind ourselves that the pursuit of substantive equality includes recourse to policies that can prescribe redistributive measures as situationally necessary (especially in social-policy legislative interventions),[60] premised in part on social realities of vulnerability and disadvantage and intended to break cycles of disadvantage around access to resources, opportunities and choice. The overarching objective, when one speaks of property adjustment orders in cohabitational relationships, is sustainable transformation of the more vulnerable party, experienced as true autonomy and freedom.

[90] It is in this setting of gender sensitive adjudication, and especially where there may be intersectional discrimination, that a hermeneutic of suspicion as explained in *Nicholson v Nicholson*[61] is an apt analytical methodology in relation to both law and facts. Achieving substantive equality requires a choice of interpretation, where alternatives may exist, which best guarantees equality as fairness and justice – manifested as a just outcome.[62] Ultimately, and as we shall see, the issue is whether as a substantive outcome and in a context of cohabitational relationships, there is a genuinely equitable result.

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[58] See *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332 at [66]. See also, Janeille Zorina Matthews and Jewel Amoah (eds), *Securing Equality for All in the Administration of Justice: Proceedings of the Caribbean Judicial Dialogue* (Faculty of Law University of the West Indies, Mona 2019) 22-25. See also, Sandra Fredman, 'Substantive Equality Revised' (2016) 14 ICON 712.
[59] Janeille Zorina Matthews and Jewel Amoah (eds), *Securing Equality for All in the Administration of Justice*: *Proceedings of the Caribbean Judicial Dialogue* (Faculty of Law University of the West Indies, Mona 2019) 4. Intersectional discrimination occurs where the discriminating factors or elements are based on and may combine more than one basis of discrimination, for example, and in the case of women who are cohabitants, these grounds could include sex, gender, social origin, colour etc. Hence a hermeneutic of suspicion as an apt analytical methodology.
[60] See Janeille Zorina Matthews and Jewel Amoah (eds), *Securing Equality for All in the Administration of Justice: Proceedings of the Caribbean Judicial Dialogue* (Faculty of Law University of the West Indies, Mona 2019) 24-25.
[61] *Nicholson* (n 31).
[62] 'Justice Through a Gender Lens: Gender Equality Protocol for Judicial Officers' (Belize Judiciary, 2018) 12, 13, 15 (2.1 The Principle of Equality).

[91] To truly understand this cohabitational context, judicial officers must understand Belizean societal norms, the people and women in particular, their experiences of power and powerlessness, their values, their needs, the realities of their lives and circumstances, and their lived relationships with other persons and members of the society that they inhabit.[63] For women in particular, cohabitational recognition and rights, especially property rights, must be viewed in the historical context and struggle for equality in the face of generations of state sanctioned socio-legal exclusion, discrimination, and powerlessness.[64]

[92] In addition to the ruling on the issues in relation to the cohabitational agreement set out above, on the facts of this case, the trial judge could properly have made: (i) the declarations of beneficial interest in the absence of a pleading of constructive or resulting trusts, (ii) the orders regarding the beneficial interest of the Respondent in relation to the Benzer shares and the Venezuela Property even though the legal interests in both were vested in third parties who were not joined to the proceedings, and (iii) the declarations, settlement and consequential orders that were in fact made.

[93] This opinion will be developed by: (i) considering regional common law and legislative interventions, focusing on Barbados, Trinidad and Tobago, Jamaica, and Guyana, (ii) undertaking an analysis of the law in Belize, (iii) applying that analysis to the specific property issues in dispute in this appeal, (iv) stating concluding findings and opinions, and (v) a review of the declarations made by the trial judge against with regard to the pleadings, joinder of third parties and the valuation.

Regional Common Law and Legislative Interventions

> *'Through these developments, Caribbean legislators and judges reckoned with foundational postcolonial questions including, who is a person in law, what is*

[63] Matthews and Amoah (eds), *Securing Equality for All in the Administration of Justice* (n 60) 10, 12-13.
[64] Professor Rex Nettleford interprets the history of the Caribbean 'in terms of claims and counterclaims to land, entitlement, power and personhood.' Rex Nettleford, 'The Cultural Aspects and Societal Implications of Human Rights Legislation: Particularly in the Caribbean Context' (Human Rights Caribbean Symposium, Cayman Islands, September 2001) 4, cited in Matthews and Amoah (eds), *Securing Equality for All in the Administration of Justice* (n 60) 16.

family, what constitutes property and where should postcolonial law come from."[65]

[94] The development of the law in this area of cohabitational relationships is a matter of policy. It has been piecemeal in the region, led initially by post-independence judges' innovative adaptations and applications of trust law,[66] and subsequently, and sporadically, by legislative interventions. The latter have not been uniformed across the region and the textual language varies. Thus, beginning in Barbados,[67] and continuing in Guyana,[68] Trinidad and Tobago,[69] Belize,[70] and Jamaica,[71] we see distinct and different approaches, though all are centred around recognising and enabling, among other things, property rights of cohabitants. At the heart is a recognition that women and children have been discriminated against to their personal and to national developmental disadvantage, and that redress is imperative.[72] One size does not fit all regionally, yet all seek similar goals. Jurisprudential responses by the courts therefore need to be nuanced and respectful of national policies if they are to avoid neo-colonial paternalistic impositions.

[95] In relation to the developmental judge-made law that has emerged as iconic Caribbean jurisprudence (in the absence of legislation and in the highest traditions of the common law's capacity to respond to changing awareness of social contexts and its ability to respond in order to achieve social justice, particularly for the legally marginalised and subjugated), Professor Tracy Robinson would comment as follows:[73]

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[65] Tracy Robinson, 'Remaking Family Property Law in the Anglo Caribbean' in Margaret Briggs and Andy Hayward (eds), *Research Handbook on Family Property and the Law* (Edward Elgar Publishing Ltd, 2024) 463-464.
[66] See for example, *Khan v Khan* GY 1970 HC 12 (CARILAW), (30 December 1970); *Rahieman v Hack* GY 1975 HC 24 (CARILAW), (23 May 1975); *Cupid v Thomas* (1985) 36 WIR 182 (VC); *Harrinarine v Aziz* (TT HC, 13 March 1987). See also, Robinson, 'Remaking Family Property Law in the Anglo Caribbean' (n 65) 469-474.
[67] Family Law Act, Cap 214.
[68] Married Persons (Property) Act, Cap 45:04 as amended by Act 20 of 1990.
[69] Cohabitational Relationships Act, Chap 45:55.
[70] Supreme Court Judicature Act, CAP 91 as amended by Act 8 of 2001.
[71] Property (Rights of Spouses) Act 2004.
[72] Robinson, 'Remaking Family Property Law in the Anglo Caribbean' (n 65).
[73] ibid at 469.

> In these cases, the judges identified certain customary conjugal relationships in the Caribbean as marriages *in fact* or *common law marriage*, redefining the boundaries of what was extra-legal. The judges made inferences about an intention to share property from the *nature* of the de facto relationships and a range of direct and indirect contributions to property, including women's contributions to household expenses in a serious long-term relationship. By implying a common intention to share the property, the judges elevated women's interest arising from these relationships "into a proprietary one, rather than a personal one".

[96] These judicial interventions are examples of post-colonial law making at its best, though not by any means perfect.[74] These court actions were brought mainly (if not exclusively) by Caribbean women, who suffered the economic and social disadvantages of colonial patriarchal and Christian monogamous marriage and moral biases, disconnected from Caribbean realities, and undermining of women's agency, empowerment, and entitlements to social and economic justice. These are the stories of women's struggles (and their suffering) for legal recognition and a just share in property duly acquired and developed by their contributory efforts and inputs during relationships that have been described over the years, with evolving degrees of recognition, acceptance and legitimacy, as: 'faithful concubinage', 'compassionate unions', 'keeper family', 'common law marriage', 'common law union', and 'cohabitational relationship'.[75]

[97] The post-colonial judicial lens has therefore been informed by the Caribbean reality that women are the parties most discriminated against by the prevailing socio-legal contexts. Legislative interventions are also built on this recognition, and this is explicit in Belize. The interpretation and application of these 'new laws' must also be contextualised and developed with this socio-legal sensitivity and awareness.

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[74] Robinson, 'Remaking Family Property Law in the Anglo Caribbean' (n 65) 474: 'Leading Caribbean anticolonial male judges, on an upward trajectory in their judiciaries, asserted themselves as new governing elites and worthy leaders who transcended the national scale at which these cases were brought, by developing a distinct Caribbean jurisprudence within their inheritance of the common law.'

[75] Robinson, 'The Properties of Citizens' (n 49).

[98] The specific focus of this case includes a dispute about the application of an agreement made by the parties as it related to property acquired by the parties during their cohabitational relationship (which can be considered a cohabitational agreement for the purposes of this analysis). The following overview of regional legislative developments will focus on this aspect, to demonstrate differences and commonalities. Barbados,[76] Trinidad and Tobago,[77] Jamaica,[78] Guyana,[79] and Belize[80] will be considered as these are the five Anglo-Caribbean jurisdictions that have legislated to address the property rights of cohabitants. They have done so in socio-legal contexts of asymmetrical power relations and incidents of discriminatory intersectionality.[81]

Barbados

[99] Barbados' Family Law Act, 1981 is a pioneering piece of Caribbean socio-legal engineering that addressed 'proceedings between the parties to a union other than a marriage' and 'cohabitation or separation agreements'.[82] A union other than a marriage is defined in Pt V of the Act and both cohabitation and separation agreements are addressed in Pt VI of the Act which deals with maintenance and property. A cohabitation agreement describes an agreement to make provision for the rights and obligations of parties during cohabitation or upon ceasing to cohabit, and a separation agreement is one that is made by cohabitants after separation.[83] In both instances such an agreement must meet statutory minimum requirements, and be in writing and signed by the parties and two witnesses.[84] It may also be registered.[85] Thus, Barbados provides for party autonomy through these 'opt out' party agreements. However, these agreements are not absolute,

[76] Family Law Act (n 67).
[77] Cohabitational Relationships Act (n 69).
[78] Property (Rights of Spouses) Act (n 71).
[79] Married Persons (Property) Act (n 68).
[80] Supreme Court Judicature Act (n 70).
[81] Robinson, 'Remaking Family Property Law in the Anglo Caribbean' (n 65) at 479: 'The new states looked at their neighbours and built ideas of Caribbean legal kinship as much as they turned to common law countries … as a traditional and practical resource. They also had to contend with law's indeterminate imprint within intimate, interdependent relations and unequal arrangements of familial power.'
[82] Family Law Act (n 67) s 2(1)(k).
[83] ibid at s 49.
[84] ibid at s 65.
[85] ibid at s 66.

and the legislation provides safeguard mechanisms giving the courts a residual jurisdiction and power to override and/or vary them.[86] For example, in situations of fraud, undue influence and party desire,[87] or in exercise of powers under s 62 of the Act 'if there is just cause for so doing,[88] and/or in situations where an agreement is intended to operate in substitution of the rights of parties, it is ineffective unless approved by the court,[89] and approval is conditional on a court's finding of satisfaction that 'the agreement in respect of financial matters are proper.'[90] There can be no doubt that what is considered 'proper' must be a just and equitable outcome.

[100] Barbados set a policy template for cohabitational and separation agreements that balanced party autonomy against court supervision based on prescribed safeguard mechanisms. This is essentially repeated in Trinidad and Tobago and in Jamaica though in different formulations and using nuanced methods. It is no different in Belize, as we shall see. Guyana may be anomalous, as will be explored, and legal precedents from Guyana on the issue are distinguishable.

Trinidad And Tobago

[101] Trinidad and Tobago's 1998 legislation is also groundbreaking regionally. Its definition of cohabitational relationship is not time bound, unlike Barbados which sets a minimum five-year period of cohabitation for the legal recognition of unions other than marriage.[91] However, in Trinidad and Tobago s 7 prescribes three circumstances any one of which must exist for an application to be made for property adjustment orders. Of these three, one is that cohabitants must have lived together for not less than five years.[92] Part IV of the Cohabitational Relationships Act[93] deals with cohabitation and separation agreements.

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[86] ibid.
[87] ibid.
[88] ibid at ss 62 and 66.
[89] ibid at s 67.
[90] ibid.
[91] See, Family Law Act (n 67) s 39 and Cohabitational Relationships Act (n 69) s 2.
[92] The other two are that an applicant: (i) has a child arising out of the cohabitational relationship, or (ii) has made substantial financial contributions as prescribed by s 10 of the Act.
[93] Cohabitational Relationships Act (n 69).

Cohabitants may opt out of the statutory regime and enter into cohabitation agreements which determine property and maintenance rights and obligations during and after the period of cohabitation and as well upon death.[94] Separation agreements are similarly provided for.[95] These agreements are governed by the law of contract.[96] They must however meet statutory minimum requirements which include receiving legal advice,[97] and are also subject to residual and discretionary safeguard mechanisms.[98] For example, a court may vary or set aside parts of or entire cohabitation or separation agreements where 'the circumstances of the partners have so changed, that it would lead to grave injustice,'[99] or if there has been material and significant non-disclosure of assets or debts.[100] In relation to the 'grave injustice' requirement, it is noteworthy and relevant that in s 10 of the Cohabitational Relationships Act , a court may make 'any such order as is just and equitable' having regard to the stated considerations (which are non-exhaustive).

[102] It is also worth mentioning *Persad v Persad*,[101] which considered a post-nuptial separation agreement made by a married couple, where the relevant legislation did not specifically provide for nuptial agreements. Considering the UK decisions of *Radmacher*[102] and *MacLeod v MacLeod*[103], the Court of Appeal concluded that a post-nuptial agreement, freely entered into by the parties with full appreciation of its implications, may be considered by a court and given due weight in the determination of orders for financial provision and property settlement. However, that such an agreement must be considered against the relevant factors outlined in, and including the tailpiece of, s 27 of the Matrimonial Proceedings and Property Act.[104] The Court of Appeal was clear, that while post-nuptial separation

[94] ibid at s 25.
[95] ibid at s 26.
[96] ibid at s 27.
[97] ibid at s 28.
[98] ibid at s 29.
[99] ibid at s 29(1).
[100] ibid at s 29(3).
[101] TT 2011 CA 37 (CARILAW), (31 October 2011).
[102] *Radmacher v Granatino* [2011] 1 AC 534.
[103] [2010] 1 AC 298.
[104] Cohabitational Relationships Act (n 69). See also, *Persad v Persad* (n 101) at [61]-[62], [68].

agreements were not void, they could not oust the jurisdiction of the court under s 27 and its statutory duty to exercise its powers to make just orders.[105]

Jamaica

[103] Jamaica has been the last of these five jurisdictions to legislate, having done so in 2004. The Property (Rights of Spouse) Act has nuanced features in relation to protection of and provision for property rights of cohabitants. For example, there are specific provisions dealing with a family home, and s 6 of the Property (Rights of Spouse) Act prescribes a presumptive one-half share entitlement in the family home.[106] Cohabitants may opt out of the statutory regime and enter into cohabitation agreements which determine property rights and obligations during and after the period of cohabitation.[107] However, such agreements must also meet statutory minimum requirements, they must be in writing and signed by the parties, and witnessed by a justice of the peace or a lawyer,[108] and include a mandatory requirement that each party shall 'obtain independent legal advice before signing the agreement and the legal adviser shall certify that the implications of the agreement have been explained to the person obtaining the advice.'[109] As in both Barbados and Trinidad and Tobago, these cohabitation agreements are also subject to overriding residual and discretionary safeguards mechanisms.[110] For example, they are unenforceable for non-compliance with prescribed formalities, and if 'the Court is satisfied that it would be unjust to give effect to the agreement.'[111]

[104] It is worth setting out how the Jamaican legislation describes the non-exhaustive circumstances that shall be considered in determining 'unjustness', as these reflect practical, common sense, and relevant conjugal relationship factors per s 10(8) of the Property (Rights of Spouse) Act:

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[105] *Persad* (n 101) at [61]-[62].
[106] See, Property (Rights of Spouses) Act (n 71), s 6(2) and 7(1) for exceptions. Section 8 facilitates claims to a family home.
[107] ibid s 10.
[108] ibid s 10(4).
[109] ibid s 10(3).
[110] ibid s 10(5).
[111] ibid s 10(5)(b).

> (8) In deciding under subsection (5) (b) whether it would be unjust to give effect to an agreement, the Court shall have regard to-
>
> (a) the provisions of the agreement;
>
> (b) the time that has elapsed since the agreement was made;
>
> (c) whether, in light of the circumstances existing at the time the agreement was made, the agreement is unfair or unreasonable;
>
> (d) whether any changes in circumstances since the agreement was made (whether or not such changes were contemplated by the parties) render the agreement unfair or unreasonable;
>
> (e) any other matter which it considers relevant to any proceedings.

[105] Noteworthy therefore, in Barbados, Trinidad and Tobago, and Jamaica, is the fairness common overriding safeguard mechanism that is based on a court's assessment of whether a cohabitation or separation agreement is unjust. In the social context of cohabitational relationships, this safeguard, though neutrally framed, is pragmatically and sociologically intended to afford special protection to women in cohabitational relationships. It aligns with historical and current realities of gender based asymmetrical power relations and intersectional considerations. Whether specified or not, they are properly implied in any relevant and realistic assessment of the justness of property division and distribution as between cohabitants in the Caribbean.[112] Indeed, their antecedents lie in the judge-led common law developments of the law in this area. In the final analysis, the common objective in all three jurisdictions, is to ensure that a fair, just, equitable and proper, outcome is arrived at by the courts.

Guyana

[106] In Guyana, recognition of cohabitational relationships came through a 1990 amendment to s 15 of the existing Married Persons (Property) Act,[113] which deals

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[112] ibid s 14(2).

[113] Married Persons (Property) Act (n 68), s 15(10), which equates both marriage and common law relationship in so far as a cohabitational relationship is established as being 'a common law union'.

with title to or possession of property. In this regard, there is an overarching judicial discretion to 'make any order with respect to the property in dispute … as he thinks fit.'[114] This jurisdiction includes the power to order 'any inquiry touching matters in question to be made in any manner he thinks fit.'[115] These are broad and far reaching powers, no doubt intended to ensure that justice is done, in the form of just and equitable outcomes, in all the circumstances of each particular case.[116]

[107] It would appear that but for s 6A, which is limited to the specific circumstances described,[117] and given the statutory limitation of the recognition of cohabitational relationships afforded by s 15(10),[118] there is no provision made in the Married Persons (Property) Act for the general recognition or treatment of cohabitational agreements in relation to property. The position in law, unlike in Barbados, Trinidad and Tobago, and Jamaica, is therefore likely dependent on common law developments in relation to cohabitational relationships. No doubt the advancement of that common law must be guided by Caribbean and Guyanese social contexts in order to achieve justice. In this regard the legislatures in Barbados, Trinidad and Tobago, and Jamaica have given good indications of relevant policy approaches, as have antecedent judge-led common law developments.

[108] Importantly, in Guyana and pursuant to s 15, for marriage or cohabitational relationships over five years, there is a statutorily prescribed starting point for the division of matrimonial property, determined by whether the claimant was or was not working.[119] This can be varied 'for good and sufficient reason.'[120] The 2014

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[114] ibid s 15(1).
[115] ibid ss 15(1) and 15(7).
[116] ibid s 15(9).
[117] Money derived from an allowance for expenses of the matrimonial home and property acquired out of that money.
[118] 'Expressio unius est exclusio alterius,' the explicit mention of one (thing) is the exclusion of another (the other). Section 15(10) specifically limits the application of 'wife' and 'husband' as including cohabitants to the Married Persons (Property) Act (n 68) ss 15 and 6A.
[119] Married Persons (Property) Act (n 68) s 15(9).
[120] ibid. For such relationships which are less than five years in duration, a court 'shall take into consideration and quantify, in such manner and to such extent as may seem just to him in all the circumstances of the case, the contribution made by a spouse to the marriage and to the welfare of the family, including any contribution made by looking after the home and caring for the family.'

decision of George J, in *Fraser v Fraser*,[121] is apposite and demonstrates the current and arguably correct analytical approach to s 15 (in the case of persons in a relationship over five years).[122] Of special note is the use of art 154A of the Constitution and the reliance on international human rights guidelines to counter discriminatory legal interpretations that can be unfairly disadvantageous to women.[123]

[109] In *Nasrudeen v Thompson*,[124] George J would explain this approach, grounded in equality and non-discrimination, as follows:

> I consider that these provisions seek to recognise a person's commitment to a relationship whether married or common law …
>
> While s 15 (9) makes a distinction between spouses who do not work … thereby differentiating in the possible award that can be made as being one-third or one-half, I am of the view that given the international movement to count caring work equally, that the provision that permits the Court to exercise its discretion to vary these awards depending on the circumstances of each case, permits a more robust view and consideration of the value of caring for the welfare of the family than has traditionally be the case. *Thus, a more nuanced and gendered view should be taken of these provisions so as to foster equality and non-discrimination as between spouses, moreso as regards women* …
> The specific language of s15 of the MPPA …, also tends to suggest that an entitlement to a share in property is restricted so that pre-acquired property … cannot be considered for the purposes of division of property. However, again I am of the view that where there is evidence of a contribution to the improvement of property whether in financial terms or otherwise e.g. whether by working in family businesses as in this case, and/or a long union or marriage, and/or contributions to the welfare of the family, then these circumstances should count towards the acquisition of a share in pre-acquired property (emphasis added).

[110] Thus, when it comes to cohabitational agreements and property division which are governed by s 15, not only is the s 6A recognition inapplicable, but the

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[121] *Fraser v Fraser* (GY HC, 1 July 2014).
[122] ibid at 3-4.
[123] ibid at 4: 'Non-recognition of women's caring unwaged work is discriminatory. As such I hold that the MPPA has to be read in light of the modern thinking that redefines notions of women's work and how it should be viewed.'
[124] *Nasrudeen v Thompson* (GY HC, 24 March 2013).

approach that is apt is one that aligns with the local jurisprudence articulated by George J in the cases of *Fraser* and *Nasrudeen*. That is to say, the appropriate approach is one that considers all relevant and material evidence in the circumstances of each case, filtered through a gendered lens 'so as to foster equality and non-discrimination … moreso as regards women.'[125] The intention and purpose is to achieve fair, just, and equitable outcomes. Noteworthy and resonant in this regard is s 15(9), which applies to relationships of less than five years, and for which relevant considerations are stated as including the general principle of 'justness', contributions by parties to the relationship, including non-pecuniary contributions to the relationship, family, and home.

[111] In *Nicholson v Nicholson*,[126] this Court has explained the appropriate approach to statutory interpretation in instances of married women's property rights in Belize, which is also apt in relation to s 15 in Guyana, given the colonial antecedents of the Married Persons (Property) Act,[127] as follows:

> To clarify this hermeneutic of suspicion; one is not asserting that traditional legal methods are of no value, or that their basic structures are totally flawed. Rather, it is to assert that they are neither complete nor exhaustive. … In particular, what is needed are more flexible approaches that can, among other things, (i) identify and admit missing (hitherto suppressed, denied, excluded) voices and points of view, (ii) take account of relevant differences, (iii) interrogate embedded structures of (discriminatory or exclusionary) power relations and privilege (typically patriarchal in the context of gender biases) and any constitutionally adverse and harmful effects, and (iv) attend to any relevant privileging or discriminating intersectional impacts (eg gender, colour, status, religion, ethnicity, disabilities). Indeed, what is needed is a methodologically and consciously overarching, critical approach to traditional forms of legal inquiry.[128]
>
> …
>
> Applying these insights to methods of statutory interpretation, yields what has been described above as the need for a hermeneutic of suspicion in

[125] ibid at 15.
[126] *Nicholson* (n 31).
[127] Originally Act 12 of 1904, and subsequently amended in 1905, 1952, and in 1990 in relation to s 15.
[128] *Nicholson* (n 31) at [48].

> the application of statutory provisions when historically disadvantaged groups are implicated, such as married women in the context of property rights.[129]

[112] To be clear, the common approaches articulated by George J and by this Court in *Nicholson*, are approaches, that when applied to cohabitational relationships, are designed and intended to achieve just outcomes for all parties. However, they recognise and address the systemic socio-legal and cultural biases of inequality and discrimination that have operated and still operate against women.

Section 17 of the Married Persons (Property) Act

[113] The question of s 17 of the Married Persons (Property) Act:[130] Does it provide for settlement agreements in relation to cohabitational property, being property acquired by cohabitants (persons in a common law union) during or in anticipation or as a consequence of their relationship? It would appear that on a plain reading of the 1990 amendments in the overarching context of the Act and bearing in mind of the specific limitations prescribed at s 15(1) as to applicability, it is arguable that s 17 has no applicability to cohabitational relationships for the purposes of s 15 rights and obligations.

[114] This interpretation may also be contextually justified when one considers the legislative history and the intention of the legislature in passing both s 17 (originally enacted as s 22 in Married Persons (Property) Ordinance 1904[131]) and the amendments to s 15 (in 1990 and 2014). Applying the hermeneutic of suspicion methodology explained in *Nicholson's* case,[132] reveals the following. Section 17 is almost identical to that of s 19 of the UK Married Women's Property Act 1882, ('the UK 1882 Act'), save and except the Guyanese provision makes explicit reference to an 'ante-nuptial contract' and uses more gender-neutral

[129] ibid at [81].
[130] Married Persons (Property) Act (n 68).
[131] Cap 144.
[132] *Nicholson* (n 31).

terminology.[133] Historically, agreements or settlements made before or after marriage were made to the benefit of the married woman and children of the marriage. It is undisputed that on the enactment of the UK 1882 Act, that agreements or settlements providing for future separation were contrary to public policy and were considered void by the Courts.[134] Therefore, the agreements and settlements mentioned in the UK 1882 Act do not refer to settlements which provide for future separation but were limited to settlements specific to property of married women. The practice at the time would have been that on contemplation of marriage an agreement may have been made that a trustee be appointed in respect of a woman's property.[135] The UK 1882 Act provided for women to own property as feme sole and fully benefit from the enjoyment of property. However, s 19 maintained the option of autonomy to enter into settlement agreements for protection, at time preventing such to go to the husband and protecting the interests of the wife's family.

[115] In comparison, in the Guyanese provision the specific term 'ante-nuptial contract' is included since its original enactment the Married Persons (Property) Act itself has also been amended to expand the remit of the Act to common law unions and express criteria for the division of property on dissolution of a marriage or common law union. Additionally, whilst the UK provision limits its application only to women, the Guyanese statute uses gender neutral terms with regards to property which may fall under such a settlement.[136]

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[133] Section 19 of the UK 1882 Act reads as follows: 'Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage*, respecting the property of any married woman,* or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income *by a woman* under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement *of a woman's own property* to be made or entered into *by herself* shall have any validity against debts contracted *by her* before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.' (emphasis added).

[134] *Cocksedge v Cocksedge* (1844) 14 Sim 244, 60 ER 351; *H v W* (1857) 3 K & J 382, 69 ER 1157; *Hyman v Hyman* [1929] AC 601.

[135] *Buckland v Buckland* [1900] 2 Ch 534.

[136] Married Persons (Property) Act (n 68), s 17: 'Nothing in this Act contained shall interfere with or affect any ante-nuptial agreement or settlement, or agreement for an ante-nuptial agreement or settlement, made or to be made, whether before or after marriage, *respecting the property of any married woman*, or shall interfere with or render inoperative any restriction against anticipation at present attached or hereafter to be attached, to the enjoyment of any property or income by *any person* under any ante-nuptial contract or settlement, or will or other instrument; but no restriction against anticipation contained in any antenuptial contract or agreement, *of a person's own property* to be made or entered into by *that person*, shall have any validity against debts contracted by that person before marriage.'(emphasis added).

[116] Therefore, the applicability of s 17 may be different from the application of the UK 1882 Act. This Court has determined, in *Ramdehol's* case,[137] that a married couple has the autonomy to settle property division by contract. However, in the context of common law unions, and considering the hermeneutic of suspicion that may be contextually apt, this section may be limited to settlements in relation to housekeeping and the division of property, *expressio unis est exlusio alterius* (the inclusion of one thing is the exclusion of others). Alternatively, any statement of the law in relation to cohabitational agreements may be a matter of common law development. Nevertheless, this is not an issue that arises for determination in this appeal and its resolution is best left for another time.

Belize

[117] In Belize, the legal recognition of cohabitational relationships happened by way of a 2001 amendment to the Supreme Court of Judicature Act.[138] Section 148D to 148I specifically addresses interests and property rights of cohabitants, described as persons in a 'common law union'.[139] In terms of the jurisdiction to make proprietary declarations and property adjustment orders, s 148E establishes that the governing principle is that a court may make 'such order as it thinks fit,'[140] and a court must be 'satisfied that, in all the circumstances, it is just and equitable to make the order.'[141] Conteh CJ, in *Vidrine v Vidrine*,[142] explained that: 'the subsections under s 148 … undoubtedly and expressly confer on the court the discretionary power to alter title to, and interests in property.'

[118] In Belize, the function and overriding objective of the court is framed in positive terms – to achieve a just and equitable outcome. This can be compared to say Barbados, Trinidad and Tobago, and Jamaica, where the overriding objective is

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[137] *Ramdehol* (n 55).
[138] Supreme Court Judicature Act (n 70).
[139] ibid s 148D. Defined as a relationship between a man and woman who are not legally married and who cohabit continuously as husband and wife for a period of at least five years.
[140] ibid s 148E (3).
[141] ibid s 148E (4).
[142] (n 33) at [66].

at times framed as being to avoid an unjust outcome. The differences, if any, are in form and not substance. In Guyana, the power of the court to make any orders as it 'thinks fit' must be similarly construed, as explained.

[119] However, in Belize, unlike in Guyana, and more like in the other three jurisdictions, there is a relatively comprehensive statutory regime that has been legislated. For example in s 148E(5) the non-exhaustive factors to be considered in arriving at a just and equitable outcome, are stated as follows:

> (5) In considering whether it is *just and equitable* to make an order under subsection (3) of this section, the court shall take into account the following,
>
> > *(a)* the financial contribution made directly or indirectly by or on behalf of either party to the union in the acquisition, conservation or improvement of the property, or otherwise in relation to the property;
> >
> > *(b)* the non-financial contribution made directly or indirectly by or on behalf of either party to the union in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent;
> >
> > *(c)* the effect of any proposed order against the earning capacity of either party to the union;
> >
> > (d) the age and state of health of each of the parties to the union and the children born from the union (if any);
> >
> > (e) the eligibility of either party for a pension, allowance, gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid;
> >
> > (f) the duration of the union and the extent to which it has affected the education, training and development of the party to the union in whose favour the order will be made;
> >
> > *(g) the need to protect the position of a woman*, especially a woman who wishes to continue in her role as a mother;

(h) the non-financial contribution made by the female party to the union in the role of companion and/or mother and in raising any children born from the union (if any);

(i) any other fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.'
(Emphasis added)

[120] Thus, regard must be had to all the circumstances of a case and also to the stated statutory factors. There is no ranking of the factors, though context may determine that certain factors be given special significance. There is therefore a broad discretion conferred on the court as to what should be taken into account and how to weigh these factors, with the objective of arriving at an outcome that is just and equitable to the parties. The standard margin of appreciation paid to fact finding and evaluations by first-tier courts ought to be respected, and appellate courts should only intervene in clear instances of errors of law and where good grounds for overturning findings of fact exist.[143]

[121] However, faithful to a social context analysis, one notes in s 148E(5) the expressed recognition of women's roles, and the policy protection afforded to them. This is in keeping with the Constitution's Preambular affirmations to acknowledge the dignity of all persons,[144] the guarantee of gender equality,[145] and its respect for international law and its treaty obligations.[146] In fact, the constitutional guarantee of gender equality was introduced by amendment to the Constitution in 2001 and demonstrates that Belize is committed to governance

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[143] *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB; *Mohammed v Albert* TT 2006 CA 27 (CARILAW), (31 July 2006); *Stewart v Stewart* [2013] JMCA Civ 47, JM 2013 CA 127 (CARILAW).

[144] Preamble to the Constitution of Belize, CAP 4 at (a) 'affirm that the Nation of Belize shall be founded upon principles which acknowledge … the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed …'.

[145] ibid at (e) 'require policies of state … which ensures gender equality …'. Introduced by amendment to the Constitution in 2001.

[146] ibid at (e) 'require policies of state … with respect for international law and treaty obligations.' For example, in May 1990 Belize signed and ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13. It ratified the Optional Protocol to the Convention in 2002: UN Gender Equality Observatory for Latin America and the Caribbean, 'Countries that have signed and ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (UN ECLAC Division for Gender Affairs) < https://oig.cepal.org/en/indicators/countries-have-signed-and-ratified-optional-protocol-convention-elimination-all-forms > accessed 21 November 2024.

that identifies deficits and gaps in gender affairs and to taking steps to address them. The judicial arm of state is equally bound to do so.

Section 18 of the Married Women's Property Act

[122] In so far as it has been argued that s 18 of the Married Women's Property Act in Belize, ('MWPA (BZ)')[147] which deals with settlements and agreements for settlement, applies to cohabitational or separation agreements that purport to deal with property acquired during the subsistence of a common law union (and properly subject to a declaration of proprietary interest or a property adjustment order[148]), that argument is mistaken. In *Tabony v Tabony*,[149] Young J addressed the matter.[150] In her opinion, this is not the law in Belize in relation to pre(ante)-nuptial agreements.[151] She explained, more generally, 'A settlement or an agreement for a settlement is not a prenuptial or post nuptial agreement. The settlement is a marriage settlement and can only affect the rights and obligations of the parties during the subsistence of the marriage.'[152]In this matter, both the High Court and the Court of Appeal (majority) were of a similar opinion.[153]

[123] Again, applying the hermeneutic of suspicion methodology explained in *Nicholson's* case,[154] the following analysis is apposite. Section 18 of the MWPA (BZ) is intended to address the property of married women and not that of persons living in cohabitational relationships. There is nothing in the 2001 amendments to the SCJAct that deals with cohabitants and their property rights and entitlements that suggest otherwise. Part X of the SCJ Act addresses 'Matrimonial Causes and Matters'. It begins at s 129 and continues through to s 148 dealing generally with divorce and matters related thereto. The 2001 amendments are introduced beginning at s 148A and deal with declarations of interests in property

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[147] CAP 176 (BZ). Section 18 in Belize is in some ways similar to s 17 of the Married Persons (Property) Act in Guyana, but in others strikingly dissimilar.
[148] Supreme Court Judicature Act (n 70) s 148E (1), (2) and (3).
[149] *Tabony v Tabony* BZ 2022 SC 41 (CARILAW), (25 July 2022).
[150] ibid at [69] - [87].
[151] ibid at [70], [76], [78].
[152] ibid at [78].
[153]Supaul (n6) at [10]-[12]; and *Lalchand v Supall* BZ 2022 CA 36 (CARILAW), (30 December 2022) at [20].
[154] *Nicholson* (n 31).

and alteration of property rights between both married persons and cohabitants – but does so in separate provisions.

[124] The following are noteworthy. Section 148D, which defines 'common law union', specifically limits its application to ss 148E to 148I of the SCJ Act. There is also no cross referencing to the MWPA (BZ), or equating by definition or otherwise, of married women to cohabitants, save and except in s 148I which is limited to the provision of maintenance.[155] There is therefore absolutely no statutory warrant to read s 18 of the MWPA (BZ) as conceivably applicable to cohabitational relationships.

[125] Furthermore, the historical and social context of s 18 of the MWPA, makes it abundantly clear that its application to cohabitational relationships would be legally perverse and interpretively misguided. Section 18(1) of the MWPA (BZ) is an amalgam of parts of s 19 of the UK 1882 Act.[156] In essence, and against a background in which at common law property which a woman had before marriage and which came to her during marriage, fell completely under her husband's control, s 18(1) seeks to reconcile two things (i) the desire to protect and preserve the property of a married woman, from her husband, and (ii) to also make a married woman responsible for her debts and liabilities.[157] These provisions only make sense in the historical and socio-legal context at the time of their introduction, when the feudal concept of coverture governed the social and

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[155] SCJ Act (n 2) s 148I states: 'A party to a common-law union shall have the same rights as a spouse to a marriage, in respect of himself or the children born out of the union, if any, to apply to the courts, either during the subsistence of the union or upon the separation of the parties to the union, for maintenance, and any law now or hereafter in force in relation to maintenance in respect of spouses to a marriage shall, upon the commencement of this section, apply, with the necessary modifications, to a party to a common-law union.'

[156] The parts of s 19 of the UK 1882 Act that were omitted from the MWPA (BZ), deal with restraints against anticipation that were imposed statutorily on married women to their disadvantage and discriminatorily, and because by s 4(2) of the MWPA (BZ) this device was made prospectively nugatory.

[157] See *Re Armstrong, ex p Boyd* (1888) 21 QBD 264 at 268, (Lord Esher, MR): 'It would not be right to suppose that the legislature when they passed this Act did not understand it, but unquestionably its construction by the Courts presents the most serious difficulties. There appears to have been an effort to reconcile two things, the desire to protect and preserve to her the property of a married woman, and the desire to make her responsible for her debts. I doubt whether the Act was really intended to protect persons of large means, but rather to protect persons of limited means, who, by their own exertion and talents obtained property which might be taken by a husband and used for his own purposes. That seems to me to be the general idea and object of the Act. Such a case would not be one of a marriage settlement with clauses against anticipation or other clauses introduced by conveyancers for the preservation of the property. So I should expect that in an Act intended to protect the property of married women care would be taken not to take away the protection intended to be given merely because a settlement does not contain such clauses. It is fair that if a woman has made money by business and then fails, that she should be responsible, and I can understand the legislature saying that in such a case everything but the settled property should go to the creditors.'

contractual status and character of marriage and of married women, and indeed of women in general.[158]

[126] Thus, the UK 1882 Act sought to shift, somewhat, the marital and contractual status of married women from that of 'feme covert' to that of 'feme sole', and in so doing to begin to undo their legal subordination to their husbands, by giving them relatively greater recognition, autonomy, and agency. This was undertaken legislatively, in part, by the creation of the legal settlement agreement that is referred to in s 19 of the UK 1882 Act and s 18 of the MWPA (BZ). This legal concept of a 'settlement agreement' is in no form or fashion akin to what in this case is being considered as a 'cohabitational agreement', or to what in the modern family law is spoken of as 'ante or post nuptial agreements' (made between free and equal partners, married or cohabiting) and intended mutually and consensually to deal with their matrimonial or cohabitational property and affairs.

Common Law Approaches

[127] It is trite, that in British common law orthodoxy and in their constitutional context of Parliamentary sovereignty, legislation prevails over the common law. Where there is a conflict between the two, the former over-rides (is 'written over') the latter, provided that conflict is clear. The common law persists unless clearly replaced by statute. Put another way, in the absence of clear legislation the courts discover, declare and apply the common law (the 'declaratory principle'). Thus, the development of the law in Belize to consider cohabitational or separation agreements in relation to cohabitational property declarations or adjustment

[158] In essence, the social and legal status of coverture treated a wife and her husband as one person: the husband. Women, and married women in particular, were 'feme coverts', covered women/wives. Coverture held that no female person had a legal identity. At birth, a female baby was covered by her father's identity, and then, when she married, by her husband's. Symbolic of this subsuming of identity, women took the last names of their husbands. Coverture created many cruel and discriminatory legal disabilities for married women, including incapacity to sue (or be sued), to make contracts, and to own personal property. Married women owned nothing, not even the clothes they wore. They had no rights to their children, and if a wife divorced or left a husband, she would lose access to them. Husbands had a claim to wages earned by his wife's labor, and to the produce of her body (children). Married women had no rights to their bodies. Under the law, and within marriage, a wife's consent was implied, thus all sex-related activity, including rape, was legitimate. And a husband could beat and discipline his wife, though not so as to cause death. See generally, Sandra Berns, 'Women in English Legal History: Subject (Almost), Object (Irrevocably), Person (Not Quite)' (1993) 12 U Tas L Rev 26; Lord Wilson, Justice of the Supreme Court of the United Kingdom, 'Out of His Shadow: The Long Struggle of Wives under English Law' (The High Sheriff of Oxfordshire's Annual Law Lecture, 9 October 2012); and The House of Lords Hansard on the Married Women (Restraint Upon Anticipation) Bill, HL Deb 05 July 1949, vol 163 cols 894-918.

orders, may also be viewed as judge-led Belizean common law developments. Developments that interpret and build on existing legislative and common law frameworks in Belize.

[128] In this regard the following are relevant. First, historically at common law both ante-nuptial and post-nuptial agreements were deemed void and unenforceable on public policy grounds. Second, in the common law world not only was the historical policy adopted, but several jurisdictions have modified it and provided for ante-nuptial agreements to be recognised and considered valid in certain circumstances. However, but for the United States of America, this has been done explicitly by legislation rather than by judicial decisions. In these jurisdictions, 'where legislation does provide for such agreements to be valid, it gives careful thought to the necessary safeguards.'[159] Third, common law developments in the UK that have modified the historical position,[160] are not to be slavishly followed or adopted in the Caribbean as they are likely to be inapt. Fourth, the historical and current socio legal and cultural realities of Caribbean cohabitants, especially of women, are unique and are different from that of cohabitants in the UK, a reality acknowledged by Caribbean jurists. Fifth, Caribbean cohabitants are, self-evidently, to be distinguished from married persons, and consequentially, cohabitational agreements are to be contextually considered. Sixth, this unique and distinguishing reality is evidenced in the legislative and policy interventions in Barbados, Trinidad and Tobago, and Jamaica which provide statutory opt out provisions that recognise cohabitational agreements yet make these expressly subject to certain statutory formalities and as well to overriding residual and discretionary safeguard mechanisms based on a court's assessment of the justness/ unjustness of any such agreements.[161]

[129] Therefore, if cohabitational or separation agreements made during the currency of such relationships (arguably pre, during, or post) and in relation to

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[159] *MacLeod* (n 103) at [31].
[160] See for example, *Radmacher* (n 102) (ante-nuptial agreements), and *MacLeod* (n 103) (post-nuptial agreements).
[161] This pattern exists elsewhere in the common law world; for example, the Property (Relationships) Act 1984, s 47 (NSW, Australia), Family Law Act RSO 1990, c F.3, ss 55-56 (Ontario, Canada), Property (Relationships) Act 1976, s 21F (New Zealand).

cohabitational property are to be considered in Belize ('property acquired … during the subsistence of the union'[162]), regard must be had to the above five considerations, and as well to the Belizean statutory factors set out in s 148E(5) of the SCJ Act. In addition, such agreements would be subject to judicial scrutiny, sensitive to gendered social, cultural, and relational power imbalances and intersectional factors, to ensure that they are free from duress, undue influence, non-disclosure, lack of understanding, compromised free will, inherent unfairness, and all other undermining considerations. (As a general baseline expectation, such agreements ought to be in writing, signed by the parties, and witnessed by a suitably qualified person, such as an attorney, who can certify that each party had access to and received independent legal advice.)

[130] As explained, the result would be that such agreements may be considered as part of the factual and circumstantial matrix that a court would evaluate in determining what could be just and equitable, and therefore as within the policy of the statutory regime. The determination of what is just and equitable, is to be assessed in the context of the nature and incidents of the relationship as a whole, and no limits can be set on what circumstances may be relevant, remembering always that the relevance must be to the question, what is just and equitable. An agreement that is just and equitable, and therefore reasonable in all the circumstances, can be given effect as part of a court's declaration or orders. In this way the development of the law in this area balances regard for party autonomy while maintaining the court's supervisory jurisdiction and so abides the constitutional guarantee to protect and ensure gender equality in contextually sensitive ways.[163] Such a development of the common law would be grounded in a Belizean *sitz im leben*.[164]

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[162] See, SCJ Act (n 2), s 148E(1).
[163] Preamble to the Constitution (n 144) at (e) 'require policies of state … which ensures gender equality …'. Introduced by amendment to the Constitution in 2001. See also, 'Justice Through a Gender Lens: Gender Equality Protocol for Judicial Officers' (Judicial Education Institute Trinidad and Tobago) at 45-50, and Belize (n 62) at 12-15, and 37.
[164] 'Life setting'.

Interpreting the Legislation Purposively

[131] Also noteworthy, is that unlike Barbados, Trinidad and Tobago, and Jamaica, the amendments that provide for the recognition of cohabitational relationships and the jurisdiction to make property adjustment orders between cohabitants, do not make any mention of cohabitation or separation agreements, whether as opt out provisions or otherwise. However, at s 148E(5)(i) of the SCJ Act, and in determining what is just and equitable, 'any other fact or circumstance' that requires consideration to achieve justice.

[132] Thus, it is reasonable to consider as part of the relevant factual and circumstantial matrix, agreements that cohabitants may have entered into in relation to their property affairs, be these cohabitational or separation agreements or otherwise. This approach is grounded in a purposive interpretation of the relevant sections in the SCJ Act and gives effect to parliamentary intent as reflected specifically in the language of s 148E(5)(i). The application of purposive interpretation of statute should be applied when there may be ambiguity in the provision outlined in the statute and the open-ended language of the provision to consider all other circumstances in alignment with the parliamentary intent of the provision. In *OO v BK*,[165] this Court adopted a purposive approach for statutory interpretation not only to achieve the object of the legislation and parliamentary intention but also to achieve fundamental human rights, core constitutional values and international treaty obligations.

[133] In this sense, the analysis of this appeal as it relates to the effect of the cohabitational agreement and such consideration of s 148(5)(i) of the SCJ Act must be interpreted purposively. In doing so, the Court must due regard to party autonomy without elevating it to a contractual status that ousts the overriding jurisdiction of the court to determine what is fair, just, and equitable. Additionally, in applying a hermeneutic of suspicion as per *Nicholson's* case,[166]

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[165] [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36.
[166] *Nicholson* (n 31).

any such agreements cannot be reasonably or rationally held to oust the court's jurisdiction to determine what is just and equitable in all the circumstances of a case.

Analysis

> *'The tactics in decolonial constitutionalism are legal and legitimate levers of constitutional power available in all jurisdictions to liberate peoples subordinated in law ...'*[167]

[134] Women living in cohabitational relationships, in particular, have been subordinated by colonial laws that were unable to see or legitimize their status or to confer legal recognition and rights. Richard Albert explains how decolonial approaches to law making and interpretation are enacted in these times: 'Once won in the theatre of war, decolonization is now prosecuted in parliaments, courts of law, and the public square. The protagonists are no longer soldiers and generals; they are politicians, lawyers, judges, and civil society.'[168] Writing about the Caribbean Court of Justice ('CCJ'), Albert would opine: '… it is a decolonial institution with a decolonial mission, intended to "repatriate to the Caribbean the development and control over the common law."[169]

[135] The Agreement Establishing the Caribbean Court of Justice, declares that the CCJ 'will have a determinative role in the further development of Caribbean jurisprudence through the judicial process.'[170] Dr Michelle Scobie unpacks this objective: 'the CCJ was born of a desire for an indigenous judicial system, a Caribbean legal philosophy and 'Caribbean Common Law' that would separate the region from the colonial legal heritage.'[171] It is this responsibility that informs the above analysis and what follows.

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[167] Richard Albert, 'Decolonial Constitutionalism' (2025) 25 Chi J Int'l L (forthcoming 2025).
[168] ibid 5.
[169] ibid at 77-78, citing Salvatore Caserta & Mikael Rask Madsen, 'Between Community Law and Common Law: The Rise of the Caribbean Court of Justice at the Intersection of Regional Integration and Post-Colonial Legacies' (2016) 79 Law & Contemp Probs 89 – 90.
[170] Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319.
[171] Michelle Scobie, 'The Caribbean Court of Justice and Regionalism in the Commonwealth Caribbean' (2016) 4(1) Carib J Int'l Rel & Diplo 93 and 96 cited in Richard Albert, 'Decolonial Constitutionalism' (n 168) at 76.

[136] In particular, and as per *Nicholson's case,* this opinion applies a contextual gender sensitive adjudicatory lens to the interpretation and application of s 148E of the SCJ Act.[172] In doing so, there is 'a necessary focus … on the "disparate impact" or effect of laws and practices, including "compounded harms" amplified by intersectionality, on individuals or groups, and not merely on intentionality.'[173] Indeed, 'what is required is a balanced human rights-based approach that is premised on the equitable recognition, empowerment, and development of women. … an approach that is grounded in the lived experiences of the gendered realities of Caribbean peoples, which acknowledges asymmetrical man-woman power relations as historically normative …'[174]

The 2011 Cohabitational Agreement

[137] The parties do not dispute that the agreement entered into in 2011 was done consensually and without any procedural irregularities such as fraud, duress, undue influence, misrepresentation, or mistake. The agreement was deemed valid by the Courts below and its validity is not the subject of appeal.

[138] The Appellant's argument is that due to the existence of the agreement, and its binding contractual status, the Respondent is estopped from claiming any interest in Benzer and in the Venezuela Property outside of the specific terms of the agreement. That since there are no bases to set aside the agreement, there is no legal justification to make any declarations or orders other than what was agreed to by the parties. Essentially, the Appellant's argument is that the agreement, as a valid, binding and enforceable contract made between legally competent, fully informed, and consenting parties of more or less equal bargaining power (absent of any procedural irregularities), ousts the jurisdiction of the court to make any proprietary interest declarations and/or property adjustment orders outside the

[172] *Nicholson* (n 31) at [2], and see further [3]-[10], and [14].
[173] ibid at [7], citing Rebecca J Cook (ed), *Frontiers of Gender Equality: Transnational Legal Perspectives* (University of Pennsylvania Press 2023) xi and 10.
[174] *Nicholson* (n 31) at [14].

four corners of its terms. The singular task of the court is to construe and give effect to the terms the agreement *qua* contract.

[139] The statutory framework in Belize with regard to common law unions specifically addresses and provides for the role of the woman in the relationship and permits the Court to make declarations or orders which are just and equitable. There are no legal provisions that specifically address cohabitational agreements. In response to these arguments of the Appellant, the following considerations and analysis are apposite.

[140] Firstly, an interpretation of the statute in terms of the plain meaning, intratextuality, and the application of the usual canons of statutory construction. The SCJ Act mandates that in declaring interests or making property adjustment orders, the court *shall* consider the factors outlined in s 148E(5) and all other relevant factors in determining what is just and equitable. A plain and literal interpretation of s 148E of the SCJ Act, reveals that s 148E(5) lists the factors which the court must take into account; a cohabitational agreement is not a factor listed. However, s 148E(5)(i) of the SCJ Act allows a court to consider 'any other fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.' In this way, a cohabitational agreement between the parties may be considered. Further, the legislation specifically seeks to protect the status of women in a common law union.[175] Therefore, on a purposive construction this is also a relevant consideration.

[141] Secondly, a consideration of the intent of the statute. It is well accepted that the legal recognition of common law unions/ cohabitational relationships is meant to provide protection and rights for persons in such relationships as they exist in Caribbean contexts. A specific aspect of this intention in Belize, is to provide recognition and protection for women in these types of relationships and to legally

[175]SCJ Act (n 2), ss 148E(5)(b), (g), (h).

acknowledge their interests in and contributions to these relationships as they sound in property.

[142] Thirdly, existing precedents in relation to settlement or separation agreements in cohabitational relationships. The view of the High Court in *Tabony*, and of the High Court and the Court of Appeal majority in this matter, is that settlement agreements in relation to marriage (and common law unions) are not provided for in the legislative framework in Belize. Further, that this Court's decision in *Ramdehol's* case is distinguishable and inapplicable.

[143] Fourthly, any existing legal customs and traditions which surround the statute and any evidence of such customs, conventions, and settled practices as aids to interpretation. Regional statutory regimes that recognise cohabitational agreements (arguably, but for Guyana), all contain general and overriding safeguards, and effectively provide that such agreements do not oust the jurisdiction of the court. They also provide certain statutory minimum pre-conditions for any such agreements, for example, that the agreement should be in writing, signed by both parties, and there should be evidence that the parties properly understood the terms of the agreement.

[144] Additionally, Belize is signatory to and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since 1990. Also, Belize's combined third and fourth reports to the Committee on the Elimination of Discrimination against Women, dated 26 September 2005, acknowledged that the amendment made to the SCJ Act in 2001 recognises the economic value of women's work in providing guidelines in respect of division of property where there is separation of parties to a common law union.[176] This legislative amendment was commended as and considered a step in the promotion of women's rights.[177] Two principles are recognised in this regard, (i) that there is

[176] UN Committee on the Elimination of Discrimination against Women, 'Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined Third and Fourth Periodic Reports of States Parties, Belize' (26 September 2005) CEDAW/C/BLZ/3-4 at 52.
[177]UN Committee on the Elimination of Discrimination against Women, 'Concluding comments of the Committee on the Elimination of Discrimination against Women: Belize' (10 August 2007) CEDAW /C/BLZ/CO/4.

protection of women's rights and their role in relationships without discrimination of whether they have chosen to enter into a formal marriage or whether they have remained in a cohabitational relationship, and (ii) that the factors specifically placed in the legislation are paramount in ensuring that the economic value of the woman as a caregiver or homemaker is not a ground to discriminate against the rights or interests they may have acquired during the course of the relationship. This is also aligned with the constitutional commitment to gender equality added in 2001 to the Preamble of the Belizean Constitution.[178]

[145] Therefore, any interpretation of cohabitational agreements must be contextualised with the formal recognition of common law unions and its purpose to address discrimination against women and to achieve substantive equality, as part of the contemporary and post-colonial customs and traditions of Belize.

[146] Fifthly, it is indispensable that policy concerns must be considered regarding the interpretation of the agreement. This requires an assessment of the projected consequences of possible decisions (outcomes) and a determination of which consequences are more consistent with the values of law in this area. The previous four components of this analysis demonstrate that a cohabitational agreement is not considered in s 148E of the SCJ Act but that this does not exclude a court's discretion to take such an agreement into account and give it due weight per s 148E(5)(i) of the SCJ Act. However, the implications of such a discretion must be further assessed and closely examined through the policy lens.

[147] Contemporary Caribbean women have advanced societally in equality and respect and are now, for example, afforded more equal educational and employment opportunities and lead economically independent lives. They, largely through their own efforts and struggles, have gained increased socio-legal

[178]Preamble to the Constitution (n 144): 'WHEREAS the people of Belize [...] (e) require policies of state which protect and safeguard the unity, freedom, sovereignty and territorial integrity of Belize; *which eliminate economic and social privilege and disparity among the citizens of Belize whether by* race, ethnicity, colour, creed, disability or *sex*; which *ensures gender equality*; which protect the rights of the individual to life, liberty, basic education, basic health, the right to vote in elections, the right to work and the pursuit of happiness; which protect the identity, dignity and social and cultural values of Belizeans...' (emphasis added).

agency and autonomy, and power and control over their own affairs, but this is by no means perfect.[179] Women living in common law relationships can freely enter into contractual agreements for their own benefit in order to provide for and protect the individual rights and interests of all parties. Therefore, in this post-colonial era, the autonomy of cohabitants who freely enter into cohabitational agreements is something that should be respected and regarded as a matter of policy and legal status, but this regard must also be situated in existing sociocultural contexts.

[148] The reality is also that this often legally assumed equal relational power dynamic is not always and everywhere applicable. Asymmetrical power relationships and disadvantageous intersectional circumstances still prevail. Furthermore, circumstances may drastically change following the execution of a cohabitational agreement and the end of the common law union, where either party may be severely prejudiced by strict enforcement of such agreements. Therefore, a simple blanket application of contractual principles in this area of family law may have prejudicial consequences, particularly for women. It remains the case, though it is changing, that in many instances it is the woman in the relationship who is more likely to undertake the role of the caregiver to her partner and children and of the homemaker, in the expectation that her and the families' needs will be provided for.

[149] These considerations have compelled many Caribbean legislatures to mandate that the court retains its judicial discretion to do what is just and equitable in relation to the division of cohabitational assets, even in the face of duly executed

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[179] In Mindie Lazarus-Black, *The Rite of Domination, Tales from Domestic Violence Cour*t (St Augustine Unit, Centre for Gender and Development Studies, University of the West Indies 2002), the author points out that human, and Caribbean women's 'agency' cannot be divorced from wider societal and structural influences of historical inequity, and is shaped by existing sociocultural realities, including still relevant social and family hierarchies. See also, Mindie Lazarus-Black, 'The Rites of Domination: Practice, Process and Structure in Lower Courts' (1997) 24 American Ethnologist 628. In this sense, see Matthews and Amoah (eds), *Securing Equality for All in the Administration of Justice* (n 60) at 75 : 'law and the making of laws is not gender neutral.' And as Tracy Robinson notes, in 'Gender, Equality, Justice and Caribbean Realities: The Way Forward', (Caribbean Association of Judicial Officers Conference, Barbados, September 2013) cited in Matthews and Amoah (eds), *Securing Equality for All in the Administration of Justice* (n 60) at 79 : 'Law and justice don't stand outside these social forces.' Indeed, and as pointed out at 95: 'Historically the Caribbean is not a place of equality but rather one of inequities' and women, especially women cohabitants have been continuously on the receiving end of these inequities.

cohabitational agreements. The legislative policy recognises that in this area of the law, and in the intersection between family and contract law, the realities and needs of the family take a measure of precedence over deference to contractual propriety. There is no evidence that the position should be different in Belize.

[150] Thus, in Belize, cohabitational agreements must be interrogated and applied in the circumstances of each specific case, and the measure of the weight to be given to them determined accordingly. Applying the hermeneutics of suspicion to the law and facts of the case ensures that the intention of the legislation is properly realised, and that the discretionary jurisdiction of the courts is not ousted. This ensures that in family matters the division of cohabitational assets and property occurs in alignment with s 148E(5) of the SCJ Act guidelines and is just and equitable in all circumstances.

Applying the Law to the Facts

[151] The application of this policy to the instant appeal yields the following. A cohabitational agreement exists that was freely entered into by both parties. Each party was aware of their respective obligations in the agreements and purported to act upon them to a certain degree. At no point in time have the parties questioned the validity of the cohabitational agreement, except for the issue as to whether the division of the assets acquired during the relationship should be limited to the ambit of the cohabitational agreement. This agreement must therefore be seriously considered and given commensurate weight.

[152] This agreement was initiated by the Respondent, in contemplation of a possible separation. Had the relationship ended immediately following the execution of the agreement and no changes occurred in property interests, then perhaps the weight and application ascribed may have been even greater. Thus, it may very well have been that at that time, had a court examined the agreement in light of the s 148E(5) factors, that the agreement could have reflected a just and equitable division of the cohabitants' cohabitational property and interests. In such a

scenario, and respecting the autonomy of the parties, orders and declarations made by the court may have been made in accordance with the terms of the agreement.

[153] However, these are not the actual facts of the instant appeal. In fact, the cohabitational relationship continued for a further four years following the execution of the agreement, and circumstances regarding the parties' property investments and interests changed significantly. For example, and as explained above, the operations and profitability of Benzer grew, leading to the *de facto* acquisition of a proprietary interest in the Venezuela Property (though not legal title), neither of which were contemplated in the 2011 cohabitational agreement. Furthermore, income derived from Benzer funded the parties' cohabitational and family lifestyle and contributed to the acquisition of the Venezuela Property. Also, the Respondent managed and worked in Benzer and contributed both directly and indirectly to its success. All this in addition to the Respondent's financial contribution of approximately $BZD20,000 to the acquisition of Benzer, and her non-financial contributions to Benzer, encouraging the establishment of the store in the Free Zone, aiding in the establishment of the company in 2011, and being part of the day-to-day operations of the company.[180]

[154] A court faced with this situation, and required to make orders and declarations which are just and equitable in all the circumstances, cannot ignore these material post-agreement changes, which also fall within the s 148E(5) statutory factors to be considered. An overall review was justified, which included consideration of the terms of the cohabitational agreement.

[155] Considering the factual matrix, to ignore the circumstances following the execution of the agreement would be contrary to the text and intent of the SCJ Act and not in alignment with the policy to protect the rights and interests of women in Belize. One policy is that courts must recognize the autonomy of

[180] *Supaul* (n 6) at [50(b)].

parties entering into agreements. Another, and not necessarily contradictory, policy conferred by statute is the responsibility to make declarations and orders that are just and equitable, a jurisdiction that cannot be ousted by agreement. Thus, in these circumstances, any agreement made should be interrogated with the hermeneutics of suspicion.

[156] In applying the hermeneutics of suspicion to the cohabitational agreement, it is clear from the rulings of the courts below that the cohabitational agreement did not reveal any troubling characteristics so as to discredit the weight to be allocated to it. The Respondent freely entered into the agreement, with full knowledge of its obligations and she raised no issue as to its validity. However, applying the hermeneutics of suspicion to the provisions of the cohabitational agreement, highlights the following terms: (i) in the recitals, '… unless superseded by any order of the court', and (ii) in clause 4, '… constitutes a final agreement … in relation to the assets listed.' These terms, read through a gender sensitive lens, would yield, firstly, a conclusion that the agreement was always intended to be subject to review by a court, and secondly, the omission of any reference to Benzer or the Venezuela Property placed them outside the ambit of the agreement.

[157] It would therefore be unjust and inequitable to have this cohabitational agreement interpreted as the full and final settlement of the distribution of all cohabitational assets some four years after its execution, and in light of the change of circumstances. This is especially so, applying the hermeneutic of suspicion to the SCJ Act and in light of the absence of any provisions for the creation of and safeguards for cohabitational agreements. To apply the cohabitational agreement exclusively, would be to undermine the statutory intention and purpose of a law specifically enacted, among other things, for the protection of women in common law unions.

[158] Therefore, not only does the hermeneutic of suspicion lead to considering and attributing due weight to the cohabitational agreement, but it also calls for an

interpretation that leads to the consideration of assets which fall outside the scope of that agreement, namely the shares in Benzer and the Venezuela Property. The suspicions are raised to this effect because the assets were acquired during the union, and there was evidence of contributions by the Respondent to the acquisition and development of these assets which were not dealt with in the cohabitational agreement.

[159] In summary, the SCJ Act allows a court to consider a cohabitational agreement in the determination of s 148E proprietary interests and property rights. A court must interrogate the document with a hermeneutic of suspicion and with a gender sensitive lens. Once a cohabitational agreement is legitimate, a court must determine the weight it must attribute to the agreement in accordance with the hermeneutics of suspicion and the statutory factors outlined in s 148E(5) of the SCJ Act. A Court is not bound to the terms outlined in the cohabitational agreement but must decide: (i) whether it reflects due consideration of the factors outlined in s 148E(5) of the SCJ Act, and (ii) applying a hermeneutic of suspicion, what weight is to be given to the terms of the cohabitational agreement (while respecting the autonomy of the parties). A court may therefore decide to give full weight to the agreement and accept it as a whole, in part, or not at all, as the case may be, and a court has the jurisdiction to make orders that are just and equitable and outside the scope of the agreement as circumstances may warrant. The approaches taken by the trial judge and the majority of the Court of Appeal were in line with the above and cannot be faulted jurisprudentially in this regard.

Pleadings Point: Respondent's Failure to Plead a Trust

[160] The Appellant contends that the failure of the Respondent to plead a constructive or resulting trust in relation to the shares in Benzer and the Venezuela Property is fatal to any claims in relation to same. Further, that the Respondent also having been unsuccessful in setting aside the May 2015 transfer of shares in Benzer, a court cannot declare that the third parties hold these shares or interests in trust for the Respondent.

[161] The jurisdiction of the court pursuant to s 148E of the SCJ Act provides for making declarations of interests in property acquired by parties during their common law union. Pursuant to s 148E(2) of the SCJ Act, a court may declare the title or rights, if any, that a party has in respect of any such property. The first question is therefore, what properties were acquired during the common law union. The Respondent properly identified the shares in Benzer and the Venezuela Property as property interests acquired during the union. The next question involves resolving the ownership of and equity interests in the assets. In relation to both Benzer and the Venezuela Property, legal ownership was accepted as being in a third party. However, the trial judge found that the Appellant retained some beneficial entitlement in these assets based on the evidence presented at the trial.

[162] In *Purba v Purba*[181], the Court of Appeal of England and Wales ruled that money belonging to a husband which was transferred to a relative's bank account could be deemed to have been assets belonging to the husband. This was done without the setting aside of the transfer, as the recipients were bare trustees [not named in the action] and, on the evidence, the money belonged to the husband.[182]

[163] Analogously, the trial judge in this matter concluded that the Appellant had a beneficial entitlement to the Benzer shares and the Venezuela Property and found that the Appellant owned at least 51 per cent of the Benzer shares and the Venezuela Property. This was based on the following evidence: (i) the fact that the Appellant continued to reside in the Venezuela Property after the transfer of the shares, (ii) the Venezuela Property was an asset acquired from a satisfaction of a debt owed to Benzer, (iii) the quantum of the payments made towards the mortgage, and (iv) the renovations done by the Appellant and Respondent to the Venezuela Property. Therefore, based on the findings of fact the High Court had jurisdiction to make the declarations that were made, as the assets were: (i)

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[181] [2000] 1 FLR 444.

[182] ibid at 446: 'The fact that the receiving bank account was not in the name of the husband but in the name of one or other of his close relations does not in any way inhibit the court from looking to the real question – whose money is it? It does not cease to be the husband's money simply because it is moved into a different account.'

property acquired during the common law union, and (ii) owned (at least beneficially) by the Appellant.

[164] On the pleadings, the Respondent sought declarations of interest in the disputed assets. The trial judge did not find that that the Respondent had any interests directly in Benzer or the Venezuela Property, but did find that on the evidence the Appellant had a beneficial interest. Consequently, the Respondent could claim an interest in the Appellant's interests. The main question to answer and which was properly ventilated before the lower courts is who owned the disputed assets which were deemed to be acquired during the subsistence of the common law union. Evidence was presented by both sides and there was no substantial prejudice to the Appellant in defending his claim. In fact, he called his daughter and Shyam Armanani as witnesses to dispute any interest which he may have had in the assets. The trial judge was therefore entitled to make a finding on the issue.

[165] Therefore, although it was not specifically pleaded that the Appellant's interests were held on trust by third parties, the issue of ownership of the assets were live issues to be determined under the statutory jurisdiction granted by s 148E of the SCJ Act. Whilst the Respondent failed to satisfy the Court she held a beneficial interest in those assets, it was clear on the evidence presented that the Appellant had interests in the assets and therefore, on the basis of the Respondent's direct and indirect contributions, she had a beneficial interest in his interests in these assets. The failure to plead a trust was inconsequential to the Court's jurisdiction to order what is just and equitable under the SCJ Act and as between the parties.

The Non-Joinder of Third Parties: Benzer Shares, Venezuela Property

[166] On the issue of the non-joinder of the parties, the Appellant asserted that an obligation lay on the Respondent to join the legal owners of the Benzer shares and Venezuela Property as third parties to the claim. Reliance was placed on *TL*

v ML (ancillary relief: claim against assets of extended family)[183] which was cited in *Fisher Meredith v JH and PH*[184]. *TL v ML* was submitted as an authority for the proposition, that it is essential where properties are legally owned by third parties, to have those third parties joined in proceedings in which there are claims by a party to an action to those properties.[185] However, even in *TL v ML*, the court continued to conduct an evaluation of the evidence presented as to whether the husband had a beneficial interest in the disputed asset, despite the non-joinder of the third party. At [37], Mostyn J explained that considering the interests of third parties at an early stage in proceedings is important to save costs and to resolve preliminary issues related to the ownership of the asset.[186] Indeed, at [41], the court explained that while the joinder of a third party in these circumstances may be the best practice, it is not a mandatory measure.[187]

[167] It is clear from these authorities that while it may have been prudent to have the third parties formally joined to the claim, failure to do so is not necessarily fatal. What is essential for this Court is to ensure that the declarations and orders made by the lower courts were within the statutory jurisdiction of s 148E, bearing in mind s 148E(7) - orders are only binding on the parties to the common law union and not on any other persons.

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[183] [2006] 1 FLR 1263.
[184] [2012] 2 FLR 536.
[185] *TL V ML* (n 22) at [34] and [36]:
34. It is to be emphasised, however, that the task of the Judge determining a dispute as to ownership between a spouse and a third party is of course completely different in nature to the familiar discretionary exercise between spouses. A dispute with a third party must be approached on exactly the same legal basis as if it were being determined in the Chancery Division.
…
36. In my opinion, it is essential in every instance where a dispute arises about the ownership of property in ancillary relief proceedings between a spouse and a third party, that the following things should ordinarily happen:

> i) The third party should be joined to the proceedings at the earliest opportunity;
> ii) Directions should be given for the issue to be fully pleaded by points of claim and points of defence;
> iii) Separate witness statements should be directed in relation to the dispute; and
> iv) The dispute should be directed to be heard separately as a preliminary issue, before the FDR.

[186] ibid at [37]: 'In this way the parties will know at an early stage whether or not the property in question falls within the dispositive powers of the court and a meaningful FDR can take place. It also means that the expensive attendance of the third party for the entire duration of the trial can be avoided. It is a great pity that none of these steps took place in this case. Had they happened, I believe that a great deal of costs would have been saved.'
[187] *Fisher Meredith* (n 184) at [41]: 'It is fair to say that while this discipline is, generally speaking, the right way of proceeding, *Fisher Meredith LLP v J H and another* [2012] EWHC 408 (Fam) it is by no means a mandatory prescription.'

[168] It should also be noted in relation to Benzer, that the Respondent initially sought to set aside the transfer of the shares to the Appellant's children, who were named Interested Parties before the High Court. Therefore, and in relation to Benzer, the third parties had notice of the proceedings and had the opportunity to protect their interests in the shares of Benzer should that have been considered necessary. However, the declaration of beneficial ownership in no way affects the shareholders' interest in Benzer. As already explained, in relation to the Venezuela Property, Shyam Armanani had notice of the proceedings and was called and testified as a witness for the Appellant. Therefore, he also had the opportunity to protect his interests in the Venezuela Property if that had been considered necessary. The non-joinder of the third-party legal owners of the Benzer shares and the Venezuela Property is of no consequence to the jurisdiction exercised under s 148E of the SCJ Act, or to the declarations and orders made by the trial judge.

[169] As an aside and in relation to the Benzer shares, it is noted that the issue of the presumption of advancement was raised and addressed in some detail by the trial judge, who dismissed its application in the circumstances of this case:[188]

> The Court must nonetheless now go on to consider whether the shares insofar as they represent ownership of the company can be considered as part of the assets acquired by the parties during their union. Having been purchased in 2009, the time of acquisition so allows. However, the only way that the company through the ownership of its shares can fall within the subject of the Originating Summons is if the Court finds that the Respondent retained a beneficial interest in the shares he transferred to his children. …
>
> The first answer that the Court would anticipate in response to this finding is that as a transfer from parent to child, there ought to be a presumption of advancement – i.e. – that the shares were intended to be a gift. *The Court declines to apply the presumption of advancement* for the simple reason that it was perfectly legally permissible for the share transfers to have recited the consideration as natural love and affection but they did not. The Court finds that the representation of the transfers being for valuable consideration was deliberately false. The Court also

[188] *Supaul* (n 6) at [38].

> looks at the extent to which the company through its primary asset – the Corozal Free Zone store - can be found to have been the primary source of income for the Respondent. The Applicant's evidence that the business (the store) paid for all aspects of the parties' lives was never refuted. The Respondent never asserted nor produced any concrete evidence of any additional source of income (except late in the proceedings, by way of further affidavit speaking to his means). (emphasis added).

[170] On appeal to the Court of Appeal, and though the Grounds of Appeal may have afforded an opportunity for the Appellant to challenge the trial judge's treatment of the applicability of advancement,[189] it is noted that the majority decision of the Court of Appeal did not make any pronouncements in relation to this issue. And in the dissenting opinion, there is also no clear reference or attempt to address the issue, though the opportunity for doing so existed.[190] Further, this issue of advancement was not specifically raised in the grounds of appeal and was not argued in written or oral submissions before this Court, though opportunity may also have existed to do so.[191]

[171] Accordingly, we will make no statement about the finding of the trial judge on the presumption of advancement. We note in passing that, *arguendo,* and as the trial judge recognised, the principle of advancement could have arisen on the facts. Furthermore, we note that this is an area of law that has spawned evolving approaches in common law jurisdictions.[192] We will therefore reserve our position on the law of advancement in the Caribbean for another time and when it is

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[189] Ground 2 states: That the Learned Trial Judge misdirected herself in finding that notwithstanding the transfer of legal ownership of the 9,000 (out of a total of 10,000) shares in the 5th Interested Party (Benzer International Co. Ltd.) by the Appellant to his children, Nimmi Lalchand, Miriany Lalchand, Demi Lalchand as trustee for Hitesh Lalchand, that the Appellant retained his beneficial interest as to 51 per cent of the total shares when such a claim was not pleaded in the Respondent's Originating Summons and notwithstanding her finding that the shares in the 5th Interested Party were not transferred to defeat the Applicant's Interest or a court order.

[190] See *Lalchand v Supall* BZ 2022 CA 36 (CARILAW), (30 December 2022) at [56] (Minott-Phillips JA).

[191] One of the Grounds of Appeal stated: The Court of Appeal (majority) erred in law in holding that the Court had jurisdiction under section 148E (3) of the SCJ Act to declare that the Appellant was the beneficial owner of the 9,000 shares held by third parties (the 1st to 4th Interested Parties to the proceedings) in Benzer and was therefore eligible to be included in the pool of assets and to make an award in favour of the respondent thereunder

[192] For example, see Juliet Chevalier-Watts, 'The Presumption of Advancement: Is It Time to Relegate This Doctrine to the Annals of History' (2016) 2 Lakehead LJ 15: 'While it is evident that Canadian courts are not willing to support the place of the presumption of advancement in relation to gratuitous gifts by parents to adult children, Australasian jurisprudence supports a more expansive view, which is consistent with the basis of the doctrine. The more expansive view is that the natural bond of love and affection flows from a parent to child, irrespective of the age of the child, and this does not change, regardless of social, political, or economic constraints or changes.' See also Alysia Blackham, 'The Presumption of Advancement: A Lingering Shadow in UK Law?' (2015) 21(7) Trusts & Trustees 786. And see comparatively, *Pecore v Pecore* [2007] 1 SCR 795, *Nelson v Nelson* (1995) 184 CLR 538, and *Jones v Kernott* [2012] 1 AC 776.

properly raised and argued before us. However, this does not change our position that the trial judge had jurisdiction to make declarations as to the Appellant's beneficial interest in the Benzer shares (and the Venezuela Property) without joinder of those parties that hold the legal interest and who had notice of and participated in the proceedings.

Respondent's Interest in the Appellant's Interest

[172] Ultimately, the Respondent did not need to have the Venezuela Property disposed of in her name. It was enough to have an interest declared, based on the beneficial interest of the Appellant and not based on the legal title of Shyam Armanani. The trial judge held that, although Shyam Armanani has a legal title to the Venezuela Property, the Appellant had an equitable interest in it. Based on this finding, it was not detrimental that Shyam Armanani was not joined as a party, as the Respondent never sought to affect his interest in the property, neither did the final order made by the Court. The Court was able to settle the dispute with regard to the interest in the Venezuela Property without affecting Shyam Armanani's legal title. As explained, Shyam Armanani also gave evidence as to his ownership. The trial judge therefore had sufficient evidence to determine the ownership of the Venezuela Property and to conclude that the Appellant held a beneficial interest in it. For the purposes of s 148E of the SCJ Act this was sufficient.

[173] In these circumstances, there is no basis to interfere with the orders of the trial judge despite the non-joinder of Benzer's shareholders (the Appellant's children) and Shyam Armanani, as Respondents to the Amended Originating Summons.

Valuations: Benzer and Venezuela Property

[174] Courts routinely undertake valuations in family matters. In the context of s 148E of the SCJ Act, the valuation by courts of cohabitational property and propriety interests is anticipated. Not only can courts make declarations as to parties' 'title

or rights in respect of property acquired … during the subsistence of the union,'[193] they can also make orders altering interests and rights, and make settlements in substitution of any such interests and rights as well as consequential orders.[194]

[175] Settlements and consequential orders must be fit and proper, and just and equitable in all the circumstances of a case.[195] The SCJ Act provides a non-exhaustive list of relevant factors that should be considered in determining what is just and equitable, and these impact this review of the trial judge's and Court of Appeal's approaches to the valuations of the Benzer shares and the Venezuela Property. Significantly, both financial and non-financial contributions, as well as the duration of a union, and 'any other fact or circumstance that … the justice of the case requires to be taken into account,' are to be considered.[196] There is therefore a broad discretion that trial judges have in determining what are fit and proper settlements under the SCJ Act.

[176] In addition, this Court has explained that in relation to concurrent findings of fact by first and second tier courts, a certain margin of appreciation will be allowed.[197] In *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd*[198], I explained this Court's approach as follows:[199]

> … if it can be demonstrated that a trial court in its assessment and determination of primary facts has made a clear, manifest, or obvious error in, and/or has reached conclusions that cannot be supported having regard to the totality of the evidence, and/or not provided clear, cogent, and reasonable justifications for making those findings, and/or there is otherwise no sufficient basis for its findings, an apex court can re-visit and review them even when there are concurrent findings. In the case of concurrent findings of primary facts, the deference afforded is achieved by applying the standard that any mistake must be demonstrated to be both significant and obvious. In relation to concurrent inferences no such equivalent deference is due as an intermediate appellate court is not in

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[193] SCJ Act (n 2) s 148E(1) and (2).
[194] ibid at s 148E(3) and (6).
[195] ibid at s 148E(4).
[196] ibid at s 148E(5).
[197] See generally, *Apsara Restaurants* (n 143) at [354] et seq.
[198] ibid.
[199] ibid at [396].

> any more privileged position than an apex court. And in relation to credibility the position is the same as in relation to primary facts. But what is critical is the flexibility that this approach affords, and which is necessary at this time in Caribbean contexts.

[177] Generally a valuation exercise undertaken by a court must be based on reasonable and credible evidence, and evaluated on a balance of probabilities.[200] In family matters however, where one party, and usually this is the male partner in both marriages and cohabitational relationships, is dominant and/or controls the finances, businesses and relevant information pertaining to same, a court can draw adverse inferences from such a party's failure to be forthcoming and to provide material evidence as to the value of the disputed assets. In such circumstances, a court may rely on and use the available evidence before the court, which is not a licence to engage in speculative assessments.[201] The policy that justifies drawing adverse inferences in certain circumstances, is an aspect of the hermeneutic of suspicion that a gender sensitive approach to adjudication demands in cases such as this one, dealing as it is with cohabitational relationships and where the male partner has not been forthcoming in assisting the court with material evidence as to valuation.

[178] In summary, a valuation exercise under s 148E of the SCJ Act, ought to be: (i) based on reasonable and credible evidence, (ii) determined on a balance of probabilities, and (iii) non-speculative, making due allowances for drawing adverse inferences and relying on available evidence when that is warranted.

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[200] See *Webb* (n 40) at [100]-[106]; See specifically at [103] 'I would accept that it is not permissible for a court to convert open-ended speculation by one party into findings of fact against the other; *there must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities before a court can draw useful inferences from a party's failure to rebut it*...'. (emphasis added).

[201] See *Prest v Petrodel Resources Ltd* [2013] 2 AC 415 at [45]: 'The modification to which I have referred concerns the drawing of adverse inferences in claims for ancillary financial relief in matrimonial proceedings, which have some important distinctive features. There is a public interest in the proper maintenance of the wife by her former husband, especially (but not only) where the interests of the children are engaged. Partly for that reason, the proceedings although in form adversarial have a substantial inquisitorial element. The family finances will commonly have been the responsibility of the husband, so that although technically a Claimant, the wife is in reality dependent on the disclosure and evidence of the husband to ascertain the extent of her proper claim. The concept of the burden of proof, which has always been one of the main factors inhibiting the drawing of adverse inferences from the absence of evidence or disclosure, cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation. *These considerations are not a licence to engage in pure speculation. But judges exercising family jurisdiction are entitled to draw on their experience and to take notice of the inherent probabilities when deciding what an uncommunicative husband is likely to be concealing.* I refer to the husband because the husband is usually the economically dominant party, but of course the same applies to the economically dominant spouse whoever it is.' (emphasis added).

[179] There is also a line of English authorities, which suggest that if a court is to undertake a valuation in circumstances where the best evidence is not forthcoming, then adopting a conservative approach may be most fair, even if not ideal.[202] However, we must not lose sight that in fact (and as was stated in relation to the traditional matrimonial jurisdiction of the court, which is akin to the exercise of powers under s 148E of the SCJ Act) :

> The court is engaged in a broad analysis in the application of its jurisdiction …, not a detailed accounting exercise. … The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera.[203]

[180] In the final result, s 148E of the SCJ Act requires that the orders made are just and equitable in all the circumstances. Valuations in family law matters depend on the evidence adduced by the parties, who have a duty to assist the court. In this sense, though adversarial in nature, this aspect of family proceedings has an inquisitorial element. Judicial officers are sometimes called upon to use their knowledge of local conditions and a fair measure of common sense to determine the reasonable value of family assets.

(a) **The Venezuela Property**

[181] The factors used by the trial judge in relation to the Venezuela Property were the value of the registered mortgage, the BZD400,000 debt owed to Benzer, the lump sum payment towards the mortgage, and the BZD1,000 periodic monthly payments made by the Appellant to Shyam Armanani. In assessing the value, the trial judge stated that the property value was not less than BZD275,000, being the mortgage figure, and not more than BZD500,000, considering the debt and payments made by the Appellant.

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[202] See *Versteegh* (n 43) at [134]-[135].
[203] See *H v H* [2008] 2 FLR 2092 at [5] (Moylan LJ).

[182] The trial judge assessed the Appellant's beneficial interest as BZD500,000. This was based on the evidence presented to the Court and with a view to ascertaining, on a balance of probabilities, the most likely figure for the value. The criticism is that it was not a conservative approach. In the analysis of the drawing of adverse inferences, the Court of Appeal found that while there was no indication of a request to provide information as to the value of the Venezuela Property, the Appellant was in the best position to do so and had the positive obligation to make full disclosure. There was therefore agreement between the trial judge and the majority of the Court of Appeal as to the value of the Venezuela Property.

[183] It is difficult when one considers, say, the BZD400,000 debt owed to Benzer, which was the basis for the acquisition and use of the Venezuela Property, in combination with the additional lump sum and periodic payments made by the Appellant, to conclude that the trial judge's assessment was unreasonable. No doubt, the courts in Belize would be aware of property appreciation factors and it is likely that the choice of BZD500,000 could very well have been a conservative one. In any event, this valuation was grounded in the available evidence and cannot be condemned as speculative. In these circumstances and applying the principles explained above, there are no legitimate bases on which this Court can review and/or overturn this assessment of value.

(b) **The Benzer Shares**

[184] The valuation of the shares in Benzer was not as straightforward. The trial judge made these findings based on incomplete financials, which did not include company liabilities, and then made a projection as to the likely increase in profits. She carried out this exercise on the basis of available evidence. The Court of Appeal agreed with the approach taken by the trial judge and found that *Versteegh v Versteegh*[204] was distinguishable from the instant appeal as it dealt with far more

[204] *Versteegh* (n 43).

complex corporate structures.[205] As with the Venezuela Property valuation, the Appellant was found to be less helpful than he could have been. In these circumstances it cannot unequivocally be said that the trial judge engaged in a completely speculative assessment.

[185] The trial judge and majority of the Court of Appeal noted that the company itself maintained poor record keeping, but that the Appellant was able to provide evidence of payments made to the Appellant as director after the transfer of the 9,000 shares. The principle is that adverse inferences may be drawn where there is a failure to provide full disclosure, and while a valuation cannot be unduly speculative, the hermeneutic of suspicion permits a court to act on reasonably cogent and available evidence, even if it is not completely fulsome. Family proceedings must not be allowed to become 'Theatres of Conflict'[206] and Caribbean courts must ensure that this does not occur.

[186] In these circumstances and given the concurrent findings on the issue, there are no bases on which this Court should interfere with the trial judge's valuations and consequent orders.

Conclusion

[187] Madame Justice Desirée Bernard in a paper entitled 'The role of the Judiciary in Promoting Gender Equality', presented at the UN-Women Colloquium on 'Gender and the Law' in Saint Lucia, in November 2011, stated:

> On the issue of gender equality a judge's personal views and life experiences may come into play in some instances. These views, however, may be tempered by a better understanding of the inequities and discrimination encountered by women due to the impact of poverty, race, illiteracy, alcohol and drug abuse as well as sexual and physical abuse; also the recognition that in some instances the courts and the

[205] *Lalchand* (n 190) at [42].
[206] See Mindie Lazarus-Black, *The Rite of Domination, Tales from Domestic Violence Court* (St Augustine Unit, Centre for Gender and Development Studies, University of the West Indies 2002) and, Mindie Lazarus-Black 'The Rites of Domination: Practice, Process and Structure in Lower Courts' (1997) 24 American Ethnologist 628. See also, Matthews and Amoah (eds), *Securing Equality for All in the Administration of Justice* (n 60) 73.

> judiciary are the only recourse available to women to protect and enforce their basic human rights. The judiciary stands as a bulwark against continuous violation of all human rights with the utilisation of international norms and treaties ratified by states being the instruments for enforcement of these rights particularly in relation to women.[207]

[188] This lens provides yet another entry point for looking at the core legal issue at stake in this appeal. The interpretation and application of the law by the Judiciary, as an arm of the State, must align with Belizean human rights provisions unless there are justifiable reasons for doing otherwise. One explicit feature of Belizean constitutional law is that it condemns indirect and adverse effects discrimination: '… no law shall make any provision that is discriminatory either of itself *or in its effect.*'[208]

[189] Thus, a question that must arise is: What is the interpretation and application of s 148E of the SCJ Act and/or the development of Belizean common law, in the context of cohabitational agreements, that best aligns with the rights of women who are cohabitants? This question and its answer do not disregard respect for the equal rights of a male cohabitant and for the recognition of other State interests.

[190] Balancing these considerations as explained, together with everything else discussed above, and aligned with a rights-centric approach to adjudication, it is ordered that the appeal should be dismissed with costs to the Respondent. In the circumstances, I agree with the outcomes arrived at by Barrow J but get there on the basis of the reasoning explained above including by applying the social context and gender sensitive approaches described.

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[207] Désirée Bernard, Judge of the Caribbean Court of Justice, 'Employing Strategies to Combat Violence Against Women' (Ministry of Community Development, Culture and Gender Affairs Distinguished Lecture and Workshop Series, Port of Spain, Trinidad, 26 September 2005) 6.

[208] Preamble to the Constitution of Belize (n 144) s 16(1). and see also on indirect discrimination, *Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc v A-G of Trinidad and Tobago* TT 2006 HC 36 (CARILAW), (26 May 2006) affirmed at [2009] UKPC 17, (2009) 76 WIR 378 (TT). Of course, judicial interpretation must also align with parliamentary intention and the international treaty obligations.

Postscript

[191] The constitutional *grundnorm* of human dignity,[209] when linked to the right to life (in the contexts of non-discrimination and equality),[210] has led to the development of the right of all persons to a dignified existence, a life of dignity. With this entitlement comes the concomitant duty of all arms of the state, including the judicial arm, to facilitate it.[211] This right to a dignified life is both immediate and future facing. Hence sustainability is an underpinning consideration. It is an aspect of the rule of law and benefits from the protection of the law.[212] In the Inter-American Court of Human Rights Case of the *'Street Children' Villagran-Morales v Guatemala*,[213] this concept was articulated as follows:

> The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also *the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.* States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it. (emphasis added).

[192] While this appeal is not directly concerned with right to life constitutional issues *per se*, its salience is no less relevant, as the intersections between non-discrimination, equality, and a right to a dignified life are quite present. It is clear that the provisions outlined in s 148E(5) of the SCJ Act, read together with the constitutional requirement for the protection of all persons from indirect

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[209] Preamble to the Constitution (n 144): 'WHEREAS the people of Belize (a) affirm that the Nation of Belize shall be founded upon principles which acknowledge … the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed …'

[210] Belize Constitution Act CAP 4 s 3(a): 'Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, … to each and all of the following, namely, *(a)* life, liberty, security of the person, and the protection of the law'

[211] *Maya Leaders Alliance v A-G Belize* [2015] CCJ 15 (AJ) (BZ), (2015) 87 WIR 178 at [47] 'The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights.' See also, *Francois v A-G*, LC 2001 HC 16 (CARILAW), (24 May 2001) at [12], 'The state must protect the right of everyone to be free from violence, including domestic violence.' (Barrow J).

[212] Preamble to the Constitution (n 144), cl (d), and s 3(a).

[213] (Merits) Inter-American Court of Human Rights Series C No 63 (19 November 1999) at [144].

discrimination, are specifically intended to protect the dignity and life of women, especially those that are in family contexts and who play the primary roles of mother and/or homemaker/caretaker.

BURGESS J:

[193] I concur with the conclusions reached by the Court in this appeal and with the reasons given by Jamadar J for those conclusions. I wish, however, to add some focus on the specific issue of the effect of s 148E of the SCJ Act on agreements between parties to a common law union as there appears to be no case law authority on this issue. In contrast, in the seminal case of *Vidrine v Vidrine*[214] the Court of Appeal of Belize has settled the corresponding issue in relation to s 148A of the SCJ Act, a section dealing with husband and wife during divorce proceedings and which is drafted in identical terms to s 148E. I propose to confront the issue in relation to s 148E and agreements between parties to a common law union (I refer to these as cohabitational agreements) by highlighting three areas: (i) s 148E and the validity of agreements between parties to a common law union; (ii) the legal effect of s 148E on agreements between parties to a common law union; and (iii) the decision of the Court of Appeal on s 148E and the agreement between the appellant, Mr Lalchand, and the respondent, Ms Supall.

(i) Section 148E and Validity of Agreements Between Cohabiting Parties

[194] At common law, unmarried couples have no automatic guaranteed rights to ownership of each other's property on relationship breakdown. Therefore, prior to the enactment of s 148E, in Belize where the common law applied, if the parties to a common law union separated, the courts had no power to override the strict legal ownership of property of the parties and to divide it as the courts considered

[214] (n 33).

fair and just. The law treated the cohabitants on breakdown as two unrelated individuals.

[195] Section 148E was enacted to address this problem. Thus, s 148E(1) provides that: 'Where the parties to a common-law union separate, then either party to the union may thereafter make application to the court for a declaration of that party's title or rights in respect of property acquired by the parties or either of them during the subsistence of the union'.

[196] It is patent that this section has application only where the parties to the common law union separate irrespective of whether the parties have entered into a separation agreement or not. In such an eventuality, s 148E(2) allows either party to the union to make an application to the court for a declaration of that party's title or rights in respect of property acquired by the parties or either of them during the subsistence of the union. In addition to such a declaration, s 148E (3) provides for the court in those proceedings to make 'such order as it thinks fit altering the interests and rights of the parties to the union in the property'. The other provisions in s 148E elaborate on the operation of s 148E(2) and s 148E(3).

[197] To be sure, s 148E does not purport to deal with the legal status of the parties to a common law union during the subsistence of the union. Particularly, the section does not purport to interfere with the right of the parties which exist at common law to enter into binding contractual agreements that satisfy all procedural requirements for contractual fairness and propriety. Accordingly, in my judgment, the courts below were correct to give primacy to the parties' exercise of their contractual autonomy recognised by this Court in *Ramdehol*[215] and to uphold the validity of their cohabitational agreement.

(ii) Legal Effect of s 148E on Cohabitational Agreements

[198] Accepting, then, that the cohabitational agreement between the parties in this case was valid, the critical question becomes this: What is the legal effect of section

[215] (n 55).

148E on that cohabitational agreement? In my opinion, this depends on whether the court is making a declaration under s 148E(2) or an order under s 148E(3).

(a) A Declaration Under s 148E(2)

[199] Under s 148E(2), in an application under s 148E(1), a power is conferred on the court to make a declaration of a party's title or rights in respect of property acquired by the parties or either of them during the subsistence of the union. It is elementary learning that, as a general legal proposition, the title and rights in respect of property may be affected by the provisions of a contract affecting that property. It follows, therefore, that in making a declaration under s 148E(2), any cohabitational agreement between the parties to the union must be considered on its terms by the court in determining what are the parties' 'title and rights'. Put differently, under s 148E(2), the court's power is limited to examining the cohabitational agreement's effect on the parties' existing title or rights to property. To be clear, s 148E(2) does not confer any power on the court to examine the justness or fairness of a cohabitational agreement or to vary or disregard the terms of any such agreement.

(b) An Alteration Order Under s 148E(3)

[200] Under s 148E(3), the court has a discretionary power to make such order as it thinks fit altering the interests and rights of the parties to the union in the property. This power includes an order for a settlement of some other property in substitution for any interest or right in the property; and an order requiring either or both parties to the union to make, for the benefit of the other party, such settlement or transfer of property as the court determines. However, the court is restricted to exercising its discretionary power to make such an alteration order to cases in which the court is satisfied that, in all the circumstances, it is just and equitable to make the order. The surpassing standard or guiding principle governing the exercise of the s 148E(3) discretionary power is one of what is 'just and equitable'.

[201] The test of what is 'just and equitable' is not at large. It is statutorily defined. Section 148E(5) contains a list of nine factors which must be considered in determining whether it is just and equitable to make an alteration order under s 148E(3). This list includes financial and non-financial contributions, earning capacity, age, pension benefits, duration of the union, and 'any fact or circumstance the court may consider'. It will be noted that the terms of a cohabitational agreement is not expressly included in the list. However, in this regard, the sweep-up provision that the court may consider 'any...fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account' is noteworthy.

[202] In my judgment, a cohabitational agreement between the parties to a common law union may be a 'fact or circumstance' which the justice of the case requires to be taken into account in an application under s 148E(1). The existence of such an agreement could be a factor that would make it just and equitable to alter property rights as empowered by s 148E(3). It is for this reason that I do not agree with Minott-Phillips JA at [51] of the judgment of the Court of Appeal that '... the entry into the agreement ... by Mr Lalchand and Ms Supall in contemplation of the end of their relationship operates to displace the applicability of legislation governing the distribution of the property of spouses'. In my view, a court is entitled to alter the interests and rights of the parties to the union in the property set out in a cohabitational agreement if the court is satisfied that justice and equity requires it.

(iii) Section 148E and the Decision of the Court of Appeal

[203] A question arose before the trial judge, Griffith J, as to rights and interests of the parties in respect of the shareholding in Benzer International Co Ltd and the Venezuela Site home situate in Corozal. Griffith J had held that these were included in the assets acquired during the parties' union. She held further that these assets were not covered under the cohabitational agreement and as such were

subject to the Court's determination under the application for division of property pursuant to s 148E(2). In this regard, she made the following declarations of ownership:

(i) The 10,000 shares of Benzer International Co Ltd ('the company') were acquired by and on behalf of the Respondent only;

(ii) The Applicant does not have a beneficial ownership in the shares of the company;

(iii) The 10,000 shares of the company were legally transferred by and on behalf of the Respondent to the 1st – 4th Interested Parties and the transfer by the Respondent in May, 2015 of 9000 shares was not made in contravention of s 148H of the Supreme Court Act, Cap 91;

(iv) Notwithstanding the transfer of legal ownership of the shares the Respondent retains beneficial ownership of the shares assessed by the Court at not less than 51 per cent of the total shares issued;

(v) Shyam Armanani holds the legal title to the Venezuela Site home, however the Respondent holds a beneficial interest in this property of not less than 51 per cent of the value of the home;

(vi) The Applicant does not hold a beneficial interest in the Venezuela Site home.

[204] The Court of Appeal by majority (Hafiz-Bertram JA and Woodstock-Riley JA) upheld the judgment of Griffith J, Minott-Phillips JA dissented.

[205] I must confess a similar difficulty to Minott-Phillips JA in relation to Griffith J's (iii) and (iv) declarations. The judge declared at (iii) that 9,000 shares in Benzer owned by the appellant were legally transferred by the appellant to his four adult children by way of gift. Notwithstanding, the judge at (iv) declared that the appellant retained 'beneficial ownership of the shares assessed by the Court at not less than 51% of the total shares issued'. The point is that even though generally a voluntary conveyance to a third party raises a presumption of a resulting trust for the transferor, this is rebutted by the presumption of advancement where, as here, the transferees are children of the transferor.

[206] Unfortunately, these presumptions were not raised before us. As explained by Jamadar J in his judgment, the presumption of advancement in the modern context is fraught. Indeed, this is especially so in relation to gifts by persons *in loco parentis* to adult children after the Supreme Court of Canada's decision of *Pecore v Pecore*[216]. Accordingly, I agree with Jamadar J that we should not attempt to explore this issue in this case and must uphold the decision as regards the beneficial ownership of the shares.

[207] Notwithstanding the foregoing, it is clear to me that Griffith J was correct in invoking s 148E(2) in respect of making declarations as to the existing title or rights to property that the parties had in respect of the assets not covered by the agreement. Significantly, Griffith J declared that Ms Supall had no title or rights to the shares or the Venezuela property. It is equally clear that Griffith J was correct to invoke s 148E(3) to make an order altering the interests and rights of Mr Lalchand in those assets that were acquired during the union and that Ms Supall could obtain an interest in respect of his interest in those assets by such alteration.

[208] In sum, I agree with my brothers that the appellant has not shown any case for interfering with the courts below's treatment of the shares or the Venezuela property. Accordingly, I agree that for this reason the appeal should be dismissed.

Disposition

[209] This Court orders that the appeal be dismissed and costs to the Respondent in this Court in the agreed sum of BZD40,000.

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[216] [2007] 1 SCR 795.

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ A Burgess

Mr Justice Burgess

/s/ P Jamadar

Mr Justice Jamadar