

CONTENTS

CHAPTER 1

Page

INTRODUCTION

1

CHAPTER 2

MARRIAGE IN GENERAL

I	The Marriage Contract	..	..	..	13
II	The Promise to Marry	..	..	..	14
III	Breach of Promise	..	..	..	19
IV	Assessment of Damages	..	..	..	24
V	Marriage Brokerage Contracts	..	..	..	28
VI	"Dos"				29
	(a) Historical Background	..	..	..	29
	(b) The Husband's Rights over Dotal Property	..	..	..	31
	(c) Dotal Agreements	..	..	..	35
	(d) The Modern Law	..	..	..	37
VII	Donations between Spouses	..	..	..	38
VIII	Domicile	..	..	..	41

CHAPTER 3

THE CONTRACT OF MARRIAGE

I	Introduction	..	..	..	44
II	Impediments to a Marriage	..	..	..	45
	(a) Marriages which are Null and Void	..	..	..	45
	(b) Solemnisation of Marriage by Means of a False Document	..	..	..	50
	(c) Prohibited Age of Marriage	..	..	..	52
	(d) Prohibited Degrees of Marriage	..	..	..	57
	(e) (i) The Right to Contract a Second Marriage	..	..	..	59
	(ii) Bigamy	..	..	..	61
	(iii) Exception to Section 362 B	..	..	..	66
	(f) Non-Observance of Statutory Formalities	..	..	..	67
III	Customary Marriage	..	..	..	75
IV	Presumption of Marriage by Habit and Repute	..	..	..	78

CHAPTER 4

THE LEGAL STATUS OF A MARRIED WOMAN

I	Introduction	..	..	..	..	84
II	Marital Power	..	..	..	..	86
III	<i>Locus Standi in Judicio</i>	..	..	..	..	90
	(a) Common Law	..	..	..	..	90
	(b) Statutory Changes	..	..	..	..	93
IV	A. Contractual Rights	..	..	..	..	101
	(i) Common Law	..	..	..	..	101
	(ii) Statutory Changes	..	..	..	..	106
	B. Contracts for Household Necessaries	..	..	..	..	112
	(i) Essential Elements of Liability	..	..	..	..	112
	(ii) <i>Pro Semisse</i> Liability	..	..	..	..	120
	(a) Wife's Liability to Traders	..	..	..	..	121
	(b) The Wife's Right of <i>Regressus</i> Against Her Husband	..	..	..	..	125
	C. A Married Woman's Contracts as a <i>Publica Mercatrix</i>	..	..	..	..	130
V	Conclusion	..	..	..	..	136

CHAPTER 5

THE PROPRIETARY CONSEQUENCES OF MARRIAGE

I	Introduction	..	..	..	..	137
II	The Common Law	..	..	..	..	141
	(i) Community of Goods and of Profit and Loss	..	..	..	..	141
	(a) Community of Assets	..	..	..	..	145
	(b) Community of Debts	..	..	..	..	146
	(ii) Termination of the Community	..	..	..	..	148
	(a) Dissolution of Marriage by Death	..	..	..	..	148
	(b) Dissolution of Marriage by Divorce	..	..	..	..	150
	(c) Annulment of a Voidable Marriage	..	..	..	..	154
III	Statutory Changes	..	..	..	..	154
IV	Antenuptial Contracts	..	..	..	..	168
V	An Evaluation of the Legal Nature of Community of Property	..	..	..	..	171

CHAPTER 6

Page

DUTY OF SUPPORT

A. I	Introduction	177
II	The Common Law	177
III	The Modern Law of Sri Lanka	179
IV	The Nature and Scope of the Maintenance Ordinance	184
(a)	The Applicability of the Ordinance to Kandyan and Muslims	184
(b)	The Availability of a Civil Action for Maintenance	190
(c)	The Nature of the Maintenance Action	196
V	Maintenance Agreements	199
VI (a)	The Effect of a Decree of Divorce on the Right to Claim Maintenance	203
(b)	The Right to Maintenance Pending Divorce	208
VII (i)	The Reciprocal Obligation of Support	209
(ii)	The Wife's Obligation to Support a Needy Husband	220
VIII	Matrimonial Fault and the Maintenance Ordinance	222
IX	Consensual Separation	231
X	Cancellation and Variation of the Maintenance Order	236
XI	Enforcement of the Maintenance Order	240
XII	Jurisdiction	247
B.	The Ownership, Use and Enjoyment of Matrimonial Property	252
I	Introduction	252
II	The Statute Law	253
III	Ownership of the Matrimonial Home	254
IV	Quantifying the Beneficial Interest	258
V	Improvements to the Matrimonial Home	261
VI	Use and Enjoyment of the Matrimonial Home	263
VII	The Deserted Wife's Equity and the Interest of Third Parties	267
VIII	The Right of Occupation of Rent Controlled Premises	276
IX	The Right to Exclude a Spouse from the Matrimonial Home	280

CHAPTER 7

SUSPENSION OF MARRIAGE

A. I	Judicial Separation	..	..	285
II	Consequences of Judicial Separation	..	..	292
	(a) Proprietary and Contractual Consequences	..	..	292
	(b) Support Obligation during Separation	..	..	294
III	Reversal of a Decree of Separation	..	..	296
B.	Private Separation Agreements	..	..	296
	(i) The Legal Nature and Validity of Separation Agreements	..	..	296
	(ii) Cancellation of a Deed of Separation	..	..	301
	(iii) The Obligation of Support	..	..	303

CHAPTER 8

DISSOLUTION OF MARRIAGE

I	Introduction	..	..	304
II	The Grounds for Divorce	..	..	311
A.	Adultery	..	..	311
	(i) The Legal Notion of Adultery and its Consequences	..	..	311
	(ii) The Quantum of Proof	..	..	313
	(iii) The Co-Defendant	..	..	323
	(iv) An Action against the Co-Respondent for Damages	..	..	327
	(a) The Legal Basis for the Award of Damages	..	..	327
	(b) Assessment of Damages	..	..	329
	(c) The Effect of Separation on the Claim for Damages	..	..	334
	(d) The Right to Claim Damages from a Female Co-Respondent	..	..	336
B.	Malicious Desertion	..	..	339
	(i) The Elements of Desertion	..	..	339
	(ii) The <i>Animus Deserendi</i>	..	..	345
	(iii) Termination of Desertion	..	..	354
	(iv) An Action for Damages	..	..	358

C.	The Right to Convert a Decree of Separation to one of Divorce	359
D.	Separation for Seven Years	360
III	An Action for Nullity	362
	(a) The Statute Law	362
	(b) Proprietary and Financial Consequences	367
IV	Payment of Costs	367
V	Jurisdiction in Matrimonial Actions	370
	(a) Actions for Divorce	370
	(b) Actions for Nullity	376

CHAPTER 9

BARS TO RELIEF

I	Introduction	379
II	The Absolute Bars	380
	(a) Connivance	381
	(b) Collusion	383
	(c) Condonation	387
III	The Discretionary Bars	390
IV	Conclusion	395

CHAPTER 10

LEGAL CONSEQUENCES OF SEPARATION AND DIVORCE

I	Personal Consequences	398
II	Financial Consequences	398
	A. Introduction	398
	B. Maintenance	400
	(i) Alimony <i>Pendente Lite</i>	400
	(ii) Permanent Alimony	403
	C. The Statute Law of England	408
	D. The Standard of Support	412
	E. Reallocation of Property	415
	(i) Scope and Objectives	415
	(ii) The Relevance of Matrimonial Misconduct	429
III	Conclusion	435
	Addendum	438
	Abbreviations	446
	Table of Cases	449
	General Index	467