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ABSTRACT

This report reviews the legal status of female homemakers in the Virgin Islands and makes suggestions for action and legislation which will be more equitable in protecting homemakers' rights. The laws described in the report apply to wives who work at home as well as outside the home, but the report mainly concerns homemakers without outside employment because they are the most vulnerable to economic inequalities. The bulk of the report explains specific laws and situations which frequently arise in the following areas: (1) marriage--tort and contract rights and liabilities of the wife, the wife's right to consortium, and rape; (2) widowhood--U.S. Virgin Islands inheritance and gift tax, and planning opportunities; (3) divorce--custody of children, award of alimony, support of relations, procedure for collecting support, tax aspects concerning divorce and separation, and property settlement; (4) guardianship; (5) home ownership; (6) public housing; (7) physical abuse--procedure followed upon report of physical abuse, and proposed avenues to aid the abused female. A concluding section outlines recommendations for legislative changes involving estate laws, social security coverage, inheritance rights, and state help in collecting child support payments for families not on welfare. (AV)

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THE LEGAL STATUS OF HOMEMAKERS IN THE VIRGIN ISLANDS

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COMMITTEE

NATIONAL COMMISSION
ON THE OBSERVANCE OF
INTERNATIONAL WOMEN'S YEAR



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THE LEGAL STATUS OF HOMEMAKERS

IN THE VIRGIN ISLANDS

BY EDITH LUCILLE BORNN

* * * * *

This report was prepared under the direction of Edith L. Bornn of the Virgin Islands Committee on the Observance of International Women's Year. It was not subject to the same editing process and review as the other Homemaker booklets in this series, due to time considerations. Opinions and points of view stated in this document are those of the authors and do not necessarily represent the official position or policies of any Federal agency, the National Commission on the Observance of International Women's Year, of its Homemaker's Committee, or of the Center for Women Policy Studies.

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This leaflet is based on the laws and judicial precedents in effect in the Virgin Islands in February 1978.

TABLE OF CONTENTS

	Page
MESSAGE FROM MARTHA GRIFFITHS	v
INTRODUCTION	1
MARRIAGE	1
Tort and Contract Rights and Liabilities of the Wife	2
The Wife's Right to Consortium	2
Rape	3
WIDOWHOOD	3
U.S. Virgin Islands Inheritance and Gift Tax	7
Planning Opportunities	8
DIVORCE	9
Custody of Children	13
Award of Alimony	13
Support of Relations	13
Procedure For Collecting Support	14
Tax Aspects Concerning Divorce and Separation	15
Property Settlement	16
GUARDIANSHIP	17
HOME OWNERSHIP	18
PUBLIC HOUSING	19
THE PHYSICALLY ABUSED FEMALE	20
Procedure Followed Upon Report of Physical Abuse	21

TABLE OF CONTENTS

2

Women Who Will Not Pursue The Abuse Complaint To Trial	22
Proposed Avenues to Aid The Abused Female	25
NOTE ABOUT THE AUTHOR	27
FOOTNOTES	28
RECOMMENDATIONS OF THE HOMEMAKER COMMITTEE	33
USEFUL PUBLICATIONS	38

MESSAGE FROM MARTHA GRIFFITHS

Importance of Legal Status of Homemaker to All Women

The legal status of homemakers is of most direct importance to the minority of women whose husbands neglect to make a will or fail to be honorable and decent in their relationships with their wives and children, for these are the women who experience the effects of the law most directly. The legal status of homemakers, however, has great significance for all women, for the parents of daughters, and for the society at large.

The rights of homemakers under support laws, property laws, divorce laws, and inheritance laws are the concrete evidence of the value society places on the homemaker's role. If women's work is not valued in the home, it has a low value outside the home. If our daughters (and sons) cannot expect that their work in the home will be recognized as of equal value and deserving equal dignity with that of the spouse who works outside the home, the institution of the family and our society will suffer. The laws in most States are not grounded in this evaluation of the homemaker's role.

The laws under consideration in this leaflet apply to all wives (and in most cases to husbands) whether they work at home or outside the home. This paper, however, has been written from the viewpoint of the homemaker not employed outside the home, because she (or he) is the most vulnerable to economic **inequalities**.

Divorce Arrangements as an Indicator of Worth of Homemakers

Because divorce is usually the only way a wife can enforce support **rights**, property settlements at divorce, and awarding of alimony (or maintenance), and child support provide the best evidence of the worth ascribed to the homemaker in the law. With 1,000,000 divorces in 1975, the economic impact of divorce on women and children is important to the society.

Inadequacy of Present Data

There is very little information of any kind available on economic arrangements at divorce and none that can be analyzed State by State. All available data, however, point to the conclusion that alimony is granted in only a very small percentage of cases, that fathers, by and large, are contributing less than half the support of the children in divided families, and that the enforcement of alimony and child support awards is very inadequate.^{1/}

One 1972 nationwide study of 133 couples divorced since 1968 concluded, "Probably because children usually remain in the maternal family after a separation, the economic status of former husbands improves while that of the former wives deteriorates." This statement is based on the status after alimony and child support payments are made.^{2/}

A poll of 1,522 women conducted in September 1975 at the request of the National Commission indicated the same pattern with respect to relative economic status and also indicated that only 14 per cent of divorced wives are entitled to alimony by award of the courts or through a voluntary settlement approved by the courts. Of the 14 per cent, only 46 per cent collect it regularly.^{3/} Only 44 per cent of divorced mothers were awarded child support and 47 per cent were collecting regularly.

1. Citizens' Advisory Council on the Status of Women, "The Equal Rights Amendment and Alimony and Child Support Laws", Department of Labor, Women's Bureau, Washington, D.C. 20210.

2. Duncan, Greg J. and Morgan, James N., editors, Five Thousand American Families - Patterns of Economic Progress, Vol. III, p. 185, Survey Research Center, Institute for Social Research, University of Michigan, Ann Arbor, Michigan 48106.

3. Poll of 1,522 women conducted in September 1975 by Market Opinion Research for the National Commission on the Observance of International Women's Year. A summary of the findings will be published by the Commission.

Women have never received alimony on a large scale. In 1922, the last year in which the U.S. Government collected national data, alimony was awarded or agreed to in 14.7 per cent of divorces. The proportions varied widely by State -- from 0.5 per cent in Pennsylvania and 0.7 per cent in Texas to 48.2 per cent in Wisconsin. In 1916 alimony was awarded in 15.3 per cent of divorces and was no higher in earlier years.^{4/}

Collection of alimony and child support is clearly a problem of national proportions. At my request in 1974, as Chair of the Subcommittee on Fiscal Policy of the Joint Economic Committee, U.S. Congress, the General Accounting Office reviewed a sample of recipients of aid to families with dependent children in seven States and found that many fathers were not under any court order or voluntary agreement to pay child support; that the amounts supposed to be paid had little relationship to the father's ability to pay; and that less than one-half of the amounts due were being collected.^{5/}

Effort of Committee to Gather Facts

The National Commission has recommended to the President that data be collected by the Bureau of the Census on economic arrangements at divorce, including the proportion of the support of children that is being contributed by each spouse and by the State through welfare programs. Part of the desired information is being collected in the 1976 Survey of Income and Education, and the Department of Health, Education, and Welfare plans to collect the remainder in 1976.

In addition, the National Commission, through its Committee on the Homemaker, is spending a large portion of its resources to secure these analyses by States, with examples, of how the laws affect homemakers during marriage, at widowhood, and at divorce. The Committee

4. Bureau of the Census, Marriage and Divorce, 1922, Government Printing Office, Washington, D.C. 20401.

5. General Accounting Office, "New Child Support Legislation - Its Potential Impact and How to Improve it," Single copies available from Members of Congress.

contracted with the Center for Women Policy Studies for the preparation of this leaflet and similar leaflets for all other States and the District of Columbia.

Since the primary purpose of the Committee are to make recommendations for reform in areas where homemakers are inequitably treated, and to inform the public about little known aspects of domestic relations law, our papers in this series emphasize those laws and judicial precedents that fail to give proper recognition to the value of the homemaker and the welfare of children and those about which there is little general knowledge. The cases are chosen to illustrate these problems. The authors were asked to include any available statistical information or factual studies on the topics covered, but there seems to be even less available locally than is available nationally.

Recommendations of Committee

Based on these analyses of State laws and presentations by experts, the Committee on the Homemaker has proposed and the National Commission has endorsed several specific recommendations to improve the status of the homemaker and raised a number of questions for further study. The recommendations and questions are quoted following the discussion of State laws.

The Commission's Report "...To Form a More Perfect Union..." includes these and over 100 other recommendations with supportive information. Copies are available from the Government Printing Office, Washington, D.C. 20401.

I hope concerned readers will urge organizations interested in the status of women and preservation of the family to make detailed studies of the State laws covered in this leaflet and their application and of the recommendations of the Commission. Other publications that may be useful in such a study are listed on the last three pages of this leaflet.

Where permitted, "court watching" is an effective technique for learning how laws are actually applied in divorce cases, what changes are needed, and for sensitizing judges and other court personnel to the legitimate needs of dependent spouses (usually women) and children. It is easy for judges to over-emphasize

the needs of the chief wage earner (usually husbands) and fail to even think about how the wife and children will live on what is left over after his needs are met. Court watching may reveal that there are not enough judges and supporting staff to give adequate consideration to each case, or that the quality of judges and other staff needs to be improved.

Most importantly, those concerned with the status of women and the family should insist that State legislatures and the U.S. Government give a high priority to the revisions in State and Federal law needed to recognize the homemaker's role as having equal value and deserving equal dignity with that of the spouse who works outside the home.

Martha Griffiths

Martha Griffiths, Chair
Committee on the Homemaker

THE LEGAL STATUS OF HOMEMAKERS
IN THE VIRGIN ISLANDS

INTRODUCTION

Here in the Virgin Islands we daily see beautiful yachts, international cruise ships, sunburned tourists; we have cool tradewinds, turquoise waters, wild orchids and white-sand beaches. But what are the woman's day-to-day problems in life--divorce, separation, abuse, death, taxes, support, credit, employment and discrimination? Just what is the status of the homemaker in this American paradise?

While the homemaker ostensibly depends upon another for life's necessities, she is the one who provides most of the basics on which her family depends. The homemaker is expected to spend at least as much time and expend as much energy on her job as does the professional who is labelled "overly conscientious." However, while the professional can count on increments and health insurance and social security benefits, the homemaker is bereft of both necessities and benefits if the family wage earner neglects or abandons her, or if she needs funds--especially for good medical care--in her old age.

We have studied the status of the Virgin Islands homemaker. Here are the findings, and suggestions for action and legislation.

MARRIAGE

The Virgin Islands does not have a statutory provision for common law marriages.1/ However, common law marriages are valid in the Virgin Islands if proved.2/

For a lawful marriage in the Virgin Islands the male and female must have parental consent if under 18 years and not have been previously married3/ and, the ceremony must be performed by a clergyman of any religion, or any judge or any court of record.4/ By statute the wife is required to bear the surname of the husband.5/

The property of every married woman at the time of her marriage or thereafter acquired by gift, devise or inheri-

tance is not subjected to the debts or contracts of the husband.^{6/} The property acquired, real or personal, by any married woman during coverture by her own labor is not liable for the debts or liabilities of the husband.^{7/}

The lack of a statutory provision for common law marriage compounds the problems for many women in the Virgin Islands. Women in this category are virtually unprotected. Further problems arise as to the status of the children born of such relationships should it be necessary to resolve the status of such children in paternity action. If it is determined by the Court that the person charged is the father, he is then held responsible for the maintenance of the child until 17 years of age,^{8/} although the age of majority in the Virgin Islands is 18 years of age.^{9/} The proof required for establishment of paternity is the preponderance of evidence test which can be satisfied by the unsupported testimony of the mother.^{10/}

Illegitimate children become legitimate by subsequent marriage of the parents to each other^{11/} or if the father publicly acknowledges the minors as his own and otherwise treats them as if they were legitimate children.^{12/}

Tort and Contract Rights and Liabilities of the wife

By statute it is provided that married women in the Virgin Islands during coverture have the right to sue and to be sued in tort as well as in contract in her own name and without joinder of the husband.^{13/} In 1973 a statute was enacted which abolished interspousal immunity.^{14/} Now a spouse can sue the other spouse for any injuries, negligent or intentional, caused either to person or property.

The Wife's Right to Consortium

In an action for personal injuries in which a wife seeks damages for loss of her husband's consortium, the wife's claim may be barred in the Virgin Islands. There are two recent conflicting District Court opinions in which the loss of consortium in one case was granted (Pascal v. Charley's Trucking Service^{15/}) and denied in the other (Donastorg v. Adkins^{16/}). Thus, in Donastorg, the Court

based its decision on the lack of express statutory authority to award the wife the loss of consortium. However, in Pascal, the same Court granted the wife's right to consortium. The appeal period has not expired of this writing and it is too early to predict which decision will be followed if appealed.

Rape

Priority for change should be given to the present rape statutes in the Virgin Islands. Conviction for rape comes only after the female's testimony is supported by other evidence.^{17/} Currently, there is a bill before the Virgin Islands Legislature that eliminates the old requirement of corroboration of the rape.^{18/} However, due to the proposed requirements, as applied, the statute would be of relatively little value other than psychological impact, as corroboration or independent proof of lack of consent is required.

Rape of any degree is not rape if the victim is the man's wife.^{19/} In comparison, the sodomy statute^{20/} does not have the husband-wife restriction.

WIDOWHOOD

Do you know if your husband has a will? If so, do you know where it is kept? Do you know the provisions of the will? What insurance policies does your husband have - auto, life, health, mortgage, personal? Does your husband have a savings account or own real property? If he owns a business, what do you know about it? What creditors does your husband have? In whose name is your homestead? In whose name is your car? Have you ever co-signed a note with your husband? Do you have a credit rating or is the credit rating that of your husband? What, if any, pension plan does your husband have? Does your husband have social security benefits? If so, what will your monthly benefits be as his survivor if he should predecease you?

If you can not answer these questions you are not taking responsibility for your life or your children's. Finding the answers to these questions is not unduly interfering with a husband's daily affairs - they are also your

concerns. If your husband should suddenly die tomorrow, what would you do? The time of such sorrow should hardly be the time to learn the state of your business affairs for the past twenty years of marriage.

Recent national statistics reveal that 85% of married women outlive their husbands.^{21/} Very few of the 85% have a minimal knowledge of how to manage on their own. For example, one widow struggled to continue monthly mortgage payments while she was receiving welfare. Months later in a cardboard box she discovered mortgage insurance which was to be used to pay the balance of the mortgage after her husband's death. Approximately 53% of all women 65 years and over in March, 1975 were widowed.^{22/} The implications of economic hardship are clear.

When speaking of the advantages of having a will, often a client will say, "I don't have a cent to leave and I've already given all my personal property to my kids." But consider this - A husband leaves home, is hit by a negligently driven truck, and is killed. Suddenly, after settlement for wrongful death, your husband's estate is left with \$75,000.

In that example, what happens in the Virgin Islands? Due to the fact he did not have a will his estate passes by intestate succession, which is often referred to as descent and distribution. The law of the Virgin Islands controls who receives the assets and by what proportion. In most instances under Virgin Islands law the wife will receive only one-third.

Basically, after payment of all debts^{23/} the real property of the deceased shall pass according to these provisions:

1. If no children, no parents, no siblings, and no nieces or nephews, the wife will get the whole.
2. If two or more children, the wife will receive one-third and the children will equally share the remaining two-thirds. (There is no provision for one child and a surviving spouse.)
3. If no children and both parents of the decedent are alive, the wife will receive \$5,000

plus one-half of the residue of the estate, the parents will receive the remaining one-half of the estate.

4. If no children, no parents, no brothers or sisters, and one niece, the wife will receive \$10,000 and one-half of the residue, the niece will receive the remaining one-half of the residue. Thus, with a division of \$75,000 in the case of Number 4, the wife receives \$42,500 and the niece receives \$32,500. One can quickly see the injustice, especially if in the example, the wife and husband last saw the niece 24 years ago, when she was a child, and have not seen her since, until she heard about the \$75,000. Even though a husband would have wanted his wife to have received the whole \$75,000 it can not be accomplished without a will.

If a husband does leave a will, what happens? Can a husband purposely leave his wife out of the provisions of a will? If he does so, a widow can take against the will.^{25/} By electing to take against the will the wife's share is treated as if in intestacy. However, there are limitations and conditions.^{26/} One limitation is that: a wife can not take more than one-half of the estate after all debts, funeral expenses and estate taxes are paid.^{27/}

Another limitation is that when a wife is provided for in a will and she still chooses to take against the will, if her intestate share is over \$2,500 and if the provision for her in the will is over \$2,500, (for example, in trust), the wife has a limited right to take \$2,500 but it will be deducted from the principal of the trust.

One can not take against the will and with the will at the same time except according to the above-stated provision. The choice to take with or against the will is purely a financial consideration: whichever will allow more for a spouse or better fits the needs of the spouse.

Further conditions of taking against the will in the Virgin Islands are phrased in gender-based terms. A husband who has neglected or refused to provide for his wife, or has abandoned her, is not entitled to the right of election.^{28/} Only when a wife has abandoned her

husband is she not entitled to the right of election.^{29/}

Also, other limitations are if a valid final decree of divorce exists against a spouse or in favor of a spouse, the spouse can not have the right of election. If a valid final decree of separation exists against the surviving spouse, the spouse can not elect.^{30/}

The Virgin Islands statutes allow provisional support for the widow and children during the administration of the estate.^{31/} The widow and children may remain in possession of the homestead, of all wearing apparel, and of all household furniture of the deceased until the administration of the estate is filed.

If the exempt property is insufficient to support the widow and children, the court may order the executor or administrator to pay the widow and children an additional allowance. The sum is based upon their circumstances, conditions of life, assets of the estate and continue for one year after the filing of the inventory.^{32/}

The statutory rights of a widow to the dwelling house in the Virgin Islands are colored by the underlying assumption that her labor to acquire a home through the years has been valueless.^{33/}

A widow may remain in the dwelling house of her husband one year after his death without being chargeable with the rent therefor, and shall have reasonable sustenance out of the estate for one year. (Emphasis added.)

On the other hand, strict construction of the language does not give a widower (male) this advantage if his wife should own the house.

The law of the Virgin Islands does not meet the recommendations of the IWY in regard to intestate succession for a surviving spouse, which are:

1. The entire estate, if there is no surviving child or parent of the person who dies.
2. The entire estate, if there are surviving children, all of whom are children of the surviving spouse.

3. One-half of the estate if there are surviving children, one or more of whom are not children of the surviving spouse.^{34/}

U.S. Virgin Islands Inheritance and Gift Tax

Under the Virgin Islands inheritance laws, a tax is imposed on property passing under the will of a decedent (the probate estate). For purposes of the inheritance tax, there is allowed a \$50,000 exemption for inheritance passing to a spouse or a lineal descendant. A tax of five percent (5%) is imposed on inheritances, in excess of said exemption, passing to a spouse or lineal descendant of the decedent. Under the Virgin Islands inheritance tax laws, no provision is made allowing for the exclusion, for purposes of the inheritance tax, for devises to charitable organizations. Therefore, under the present law, the value of any property bequeathed to a charity would be taxed at the 15% rate.

Under the Virgin Islands gift tax laws, a tax is imposed on all transfers by gift of property having situs in the Virgin Islands. A 5% tax is imposed on gifts between spouses and to lineal descendants. There is a provision for an annual \$3,000 exclusion per donee, similar to the federal gift tax provisions. Gifts to charitable organizations are not taxed.

Transfer of property to a revocable trust does not constitute a gift for gift tax purposes. If, however, real property having its situs in the Virgin Islands is transferred in trust, a stamp tax is imposed, being equal to 1% of the fair market value. Even if the property is acquired during marriage this 1% stamp tax is payable on real property transferred from husband to wife, or wife to husband.

The U.S. Virgin Islands gift tax law does not provide for the following:

1. An exclusion from gift tax for transfers made pursuant to a written property settlement wherein divorce occurs within two years (as under the federal gift tax).

2. For gifts made by a spouse to a party other than the other spouse to be treated as though each spouse made a gift of one-half the total value of the gift.
3. For real property acquired by spouses in joint tenancy or tenants by the entirety not to be treated as a gift upon the creation thereof depending on the contributions deemed to have been made by each spouse (as under the federal gift tax); and
4. For the allowance of a marital deduction with respect to gifts given by one spouse to the other spouse.

Planning Opportunities

For the married woman, planning should concern the coordination of both spouse's estates with a view to minimizing the combined tax liability on both estates. Care should be taken in the manner in which property is accumulated during the marriage in an effort to minimize the discrepancy in the combined tax liability dependent on the sequence of the spouses' death. If the wife is gainfully employed or has income of her own, separate records should be kept identifying her contributions to any property held jointly with her husband. Bequests to the surviving spouse should be examined along with property passing outside of the probate estate so that use of the marital deduction is not diminished by overfunding the amount of property passing to the surviving spouse. Arrangements can be made to provide for the surviving spouse's needs through keeping such funds or assets out of the spouse's taxable estate. Liquidity needs of the estate must be taken into consideration, so assets need not be sold at sacrifice amounts, to pay death taxes. If property is located in several jurisdictions, use of trusts should be considered so as to avoid the costs associated with ancillary administration of estates. Revocable trusts generally allow the greatest amount of flexibility in holding of property and allowing for the passing of property at death without the involvement of court supervision or probate costs. At death, taking title to property as joint tenants or tenants of the entirety can result in a taxable gift for purposes

of Virgin Islands gift tax. These types of tenancies should not be assumed by the married woman to be necessarily the most desirable type of ownership.

The single woman, including the divorcee and widow, can benefit from many of the above planning techniques as well. She cannot pass, however, half of her estate tax-free, as under the marital deduction provisions, to a favorite beneficiary. The single women's primary objective is creating and preserving her own financial resources and capital additions. It is here that financial and estate planning becomes essential for the single woman. At the outset, thus, it might be better for the single woman to focus on lifetime objectives rather than on post-death planning. It can be assumed that the single woman's concern for financial security is stronger than that of the average male or the married woman. Especially when children are involved, the possible benefits of income splitting must be investigated. Circumstances may suggest the use of a short-term trust for the support of either a dependent parent or to build a trust for a minor beneficiary.

Regardless of the circumstances, whether a woman is married or single, whether employed or a homemaker, whether her property holdings are presently great or small, the woman of today can not neglect to protect her own interest in such property or expectancies in future holdings. Dependent upon the woman's needs and resources, she should allow herself the benefit of firm, careful management and preservation of her own property interests.

DIVORCE

"By marriage, the husband and wife are one person in law." Blackstone, Commentaries on the Law of England, (1765).

By marriage, in legal theory, the husband and wife are one person, and the "one" is the husband. The value placed by society upon the homemaker's lifelong contributions is slight. Equal dignity will not be given to the homemaker's status without demands to change the

laws and to create new laws for the benefit of the homemaker. Traditionally, the role of the homemaker has been to perform duties in the home. This practice is an outgrowth of her obligation to serve her husband.^{35/}

Because children usually remain in the custody of the mother upon divorce, the economic status of the man improves while the woman's economic position deteriorates.^{36/} Moreover, the collection of alimony and child support awarded by courts, presents further economic burdens on the woman. In the Virgin Islands from 1975-1976, 1,065 marriages and 365 divorces were recorded. Statistics are not available as to the number of women awarded support and the percentage actually collecting support,^{37/} but those involved in collecting support awards indicate that the percentage of awards collected is very low and is attributed to the failure of the courts to impose proper sanctions.

Strides have been made recently in the Virgin Islands concerning the status of the woman. Consider the following example, fictitious, set in 1973, to illustrate what the law was until four years ago.

John and Sue married in their undergraduate college days. John wanted to go on with his masters' degree in accounting so Mary decided to forego her last two years of college to enable them to help meet their expenses. Right after John finished school Mary had their first child, and so on. They have been happily married for 18 years, and have three children, and Sue has never resented dropping out of college because she has such a fine family as a result of her effort. John comes home from the office one day and tells Sue he is in love with his secretary and wants a divorce. They constantly bicker over this, and upon several occasions the argument culminates with shattered vases and sore throats.

Sue decides to file for divorce on grounds of adultery, and John counterclaims for divorce based upon incompatibility of temperament. What could conceivably have happened in 1973?

In 1973, the grounds for divorce or separation were:^{38/} impotency existing at the time of the marriage and continuing to the commencement of the action; adultery; conviction for felon; willful desertion for the period of

one year; cruel and inhuman treatment calculated to impair health or endanger life; insanity of either spouse occurring after marriage; habitual gross drunkenness contracted since marriage and continuing one year prior to the commencement of the action; or incompatibility of temperament. In 1973, in an action for dissolution of marriage on the grounds of adultery, confession of adulterer, whether in or outside of pleadings, is not of itself sufficient to justify a decree.^{39/}

At the trial John has witnesses, the neighbors, who state that they hear Sue constantly yelling at John, throwing things, etc. John admits the adultery but states that he and Sue had continued living together as man and wife and Sue had forgiven him. Sue denies forgiving him, but admits that they had continued living together as husband and wife. John is granted the divorce.^{40/}

According to pre-1973 Virgin Islands law in an action for adultery the defendant could admit the adultery and show in bar of the action the act had been forgiven, or implied that it was forgiven by the voluntary cohabitation of the parties after knowledge.^{41/}

Sue's parents had given her some antiques and furniture through the years for her birthdays. Sue is moving back to her home town with the kids and wants her personal property. The Court stated that she was at fault, therefore the Court does not order return of her personal property.^{42/} Sue never wants to hear her husband's name again and asks the Court for restoration of her maiden name. The Court refuses stating she is at fault and will not change her name.^{43/} Sue asks for a temporary award of alimony to help get herself on her feet, establish a home, and find a job. The Court refuses and again states that she is the party at fault.

How could this happen? Until April 24, 1973, only four years ago, all of this could have happened. Now, with an amended statute, fault does not enter into the power of the Court in awards. The parties and facts were fictitious but used to point out what the pre-1973 statute would have authorized.

Since the 1973 amendment to 16 V.I.C. 109, more likely than not in a case such as this, child support and alimony would have been ordered. More likely than not the amount would be insufficient to keep the family in the style of living to which it had been accustomed, and the wife, middle-aged, without any skills would be forced to enter the job market. If her husband were not regular and cooperative in regular payments of child support and alimony, further court actions would be necessary.

The statute which controlled the grounds for divorce was amended generally in 1973.^{44/} Although the new amendment is vague as to whether all of the old grounds are replaced, the general opinion is that the Court shall enter a decree granting a divorce or separation when satisfied from the evidence there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no likelihood that the marriage can be preserved.

A quirk of the Virgin Islands law in regard to the division of real property is that the statute granting the jurisdiction to the Courts over the divorce action, does not allow the Court to divide any real property belonging to either or both parties as part of the divorce action. (Excluding property acquired by inheritance, gift, etc.) The Court can order a payment of alimony in gross, (lump sum payment) or at the husband's option, a transfer to the wife of an interest in the real property.^{45/}

Alimony is not based upon fault but rather on the need for support and maintenance of the party seeking the award. If neither party is entitled to alimony the Court can not order a disposition of the property.^{46/} The Court has suggested by case law the parties can institute a legal action in the proper jurisdiction for partition of the property.^{47/} The wife is at a disadvantage if unable to buy the husband's interest. The land will be auctioned, which will bring a lower price than if normally purchased.

If the property in question is the homestead, the Court does have power to dispose of it.^{48/} If the property is not the homestead but owned as tenants in the entirety

by the parties, the property shall be held no longer as tenants in the entireties but rather as tenants in common upon divorce.^{49/} Tenancy by the entirety is available only to a husband and wife. After the death of one spouse, the surviving spouse takes the whole. Tenants in common hold an estate in land by separate titles.

Custody of Children

The Territorial Court of the Virgin Islands and the U.S. District Court have concurrent jurisdiction of divorce proceedings.^{50/} Under its jurisdiction the Court has the power to award custody of the children of the marriage^{51/} which award is always subject to modification.^{52/}

The considerations for award of custody are numerous: The parent's desire for custody, the parent's fitness for custody, the child's custodial preference (giving weight to the child's age, maturity and intelligence), and ability of parent to provide proper custodial arrangements for children.^{53/} Although prior case law^{54/} indicates a "tender years" presumption, the Court will consider the above stated factors to determine what weight be given the presumption.

Award of Alimony

The court has the power to make an award of alimony upon divorce either in installments or in a lump sum, without regard to any determination of the fault of either party.^{55/} The test was applied in Poe v. Poe:^{56/}

...is not whether the wife has helped the husband to attain his existing financial status but rather the circumstances surrounding the parties, the wife's necessities and the husband's financial ability, the physical condition of the parties, the nature of their life together, and in these times the wife's independence and ability to earn her own way...

Support of Relations

Support encompasses support of persons - male or female - and includes all that is indispensable for maintenance, housing, clothing and medical attention. Support for a minor also includes education for the child.^{57/} Under

the Virgin Islands law the following persons are required to support one another: husband and wife; legitimate ascendants and descendants up to eighteen years of age; parents and children and the legitimate descendants of the latter up to eighteen years of age; the adopter and the persons adopted; and parents and illegitimate children who have been recognized as such.^{59/} In addition, brothers and sisters are under a duty to support one another.

Remedies for lack of support are both civil and criminal in nature. Statutes give priority to support orders over other financial obligations,^{59/} and such priority includes garnishment of wages, writ of execution, and assignment of wages.^{60/} Criminal liability for non-support arises when: a husband, without cause, deserts or wilfully neglects or refuses to support his destitute wife; or, a parent who deserts or refuses to support his or her destitute children under the age of 17 years,^{61/} The range of punishment for such crimes is a fine up to \$500.00 and/or imprisonment for not more than one year.

Procedure For Collecting Support

Persons who are in need of support, but are not receiving support from those responsible, are interviewed at the Virgin Islands Attorney General's office. Upon determination that the party is in need of support, through the government and at no cost, the party may file a petition in the Territorial Court of the Virgin Islands. Support proceedings are in the nature of quasi-criminal proceedings when the defending party has failed to obey an order of the Court fixing the amount of support to be paid. A record of payment is kept by the cashier of the Department of Law indicating the amount and frequency of support payments. When a case file indicates an excessive arrearage, the cashier executes an affidavit to that effect and requests the Court to issue an Order to Show Cause which asks why the defendant should not be held in contempt of Court. The rule of thumb seems to require 3 months in arrearage before any action is taken by the Court.

The Uniform Reciprocal Enforcement of Support Act allows a party to sue a defendant living within another state. The defendant must appear in Court in that state and an amount of support to be paid is set by the Court.^{62/}

The plaintiff must appear in Court in the Virgin Islands to show there is a need and an existing duty to support on the part of the defendant. The Court sends a judgment to the Court where the defendant is found. The defendant must appear in Court in that state and an amount of support to be paid is set by the Court. The defendant must pay the specified amount into his state court and, in turn, the court forwards payment to the Virgin Islands Court for collection by the plaintiff.

Federal governmental assistance in collecting support monies has been obtained through the implementation of the Title IV-D program under the amended Social Security Act of 1974. This Act strengthens the collection of child support payments both for families on Aid to Families with Dependent Children and other families.^{63/}

Statistics of the Virgin Islands Title IV-D program reveal that 32 of the 71 pending legal cases reported in St. Thomas are awaiting either Court scheduling or judicial signature. At the time of this writing, revenue collected by the Title IV-D program for the island of St. Thomas was relatively small. The total current monthly support obligation of all active Title IV-D court orders in St. Thomas is \$13,325 for 225 AFDC (Aid to Families with Dependent Children), for 439 children, an average of \$60 per month per case, or \$30.35 per child as compared to the average AFDC grant of \$37.16 per child. Only 45% of the fathers with court orders pay regularly.^{64/}

In comparison, the support payments collected by the Department of Law are much greater. In 1977 the total monies collected for St. Thomas was \$400,188.13; for the island of St. Croix the amounts collected were \$546,766.77.^{65/} Notwithstanding the seemingly enormous amounts collected as support monies, these represent but a small portion of the actual monies ordered to be paid.

Tax Aspects Concerning Divorce and Separation

While few people contemplate divorce or separation when getting married, such events involve significant shifts in economic conditions, and thus require planning to obtain the financial results as desired. Alimony for the wife, support for the children, if any, and property settlements all have tax consequences that must be recognized at the outset.

Alimony, for tax purposes, is payment made by a husband to support his wife. For purposes of income taxation, alimony payments may be taxable to the wife and deductible by the husband from his gross income, or are tax-free to her and nondeductible by him. Normally, the first alternative is chosen since the husband is usually in a higher tax bracket than the wife. If, on the other hand, the wife is in a high tax bracket or if the husband is in a relatively low bracket, or has no taxable income, but expects to make the payment out of capital, the deduction is of no value to him at the expense of the wife having to report the monies received as income.

Child support is not regarded as income to the wife if she receives custody of the children nor is it deductible by the husband. Generally speaking, the parties can achieve the tax results they wish.

If income tax consequences alone are being considered, in the usual situation, where the husband is in a higher tax bracket, it is more advantageous for him to have the payments treated as alimony. But a wife counting on an early remarriage is usually eager to boost the child support payments at the expense of the alimony, which normally ends upon her remarriage. But child support payments can also terminate when the child comes of age or marries. This may be a countervailing consideration.

There are special rules for claiming the exemption for a dependent child whose parents are divorced or separated under a decree or written agreement. As a general rule, the spouse who has custody for the greater part of the year is entitled to the exemption, but there are two exceptions. These are where (1) the other spouse provides at least \$600 of support during the year and the decree or agreement gives him the dependency exemption; or (2) he provides \$1,200 or more for support and the spouse with custody does not clearly establish payment of a greater contribution to the support.

Property Settlement

Matrimonial settlements may include partition of co-owned property, property exchanges and property settlements. These adjustments may have income, estate, and gift tax consequences.

Property settlements as such do not qualify as alimony. The transfer is treated as a sale or exchange on which the husband realizes taxable gain to the extent that the value of the property transferred exceeds his basis in the property. If the transfer does not discharge support rights, there is no gain or loss realized.

If the transfer to the wife simply represents a transfer of property that is rightfully hers (property acquired before or during marriage as a result of her own efforts, gift, or devise, or possibly even as the joint efforts of husband and wife), no taxable gain or loss is recognized.

GUARDIANSHIP

Two statutes concerning the appointment of a guardian of a minor are ripe for a constitutional challenge.^{66/} Sounding with all of the discrimination in Reed v. Reed^{67/} the Virgin Island statute grants preference for custody of a minor to the father of the minor, and in the case of his death, to the mother, while she remains unmarried.

The corresponding statute for preference among relatives as guardians^{68/} is equally as illogical as the above and without a rational basis. The statute states that the court will appoint the relative - male or female - who has made an application to the court and is the nearest living relative who is not legally responsible for the minor's support. It is ironical that a female relative has an equal right to be appointed as guardian of a minor; however, the natural mother of the child is automatically the second choice vis a vis custody of the child provided she remains unmarried. Thus, a mother remarried would be given no preference for the custody of her natural born child.

The logical choice for a guardian is the child's natural mother or father. Justification of the grant of guardianship to one "who is not legally responsible for the support" is based on the premise that one who is responsible for the support" would be tempted to withdraw funds from the minor's estate to satisfy that obligation. This thinking is riddled with assumptions and innuendoes. Detailed statutes^{69/} provide for the records, accountings, and requirements of a guardian. Temptation to take from

the minor's estate rests upon the character of the individual rather than the degree of kindred. Furthermore, the character of the individual to be appointed is a vital factor for the court's consideration.^{70/} The court has the opportunity to justly disqualify any person of questionable character.

In addition, two further statutes sound with the same gender-based discrimination. In regard to the appointment of a testamentary guardian, every father may, by his last written will, appoint a guardian for his children.^{71/} However, every mother may, by her last written will, only appoint a guardian for her children, provided that the father of such child is dead and has not appointed a guardian, or that the custody had been awarded to the mother by judgment of divorce between father and mother.^{72/}

HOME OWNERSHIP

Despite dower and curtesy being abolished in 1957, lending institutions continue to require the spouse's signature on mortgage loans. The effect such requirement has is to create a false belief on the wives' part that by their signature on the mortgage deed they have title to the property. Many women have mistaken such assumption of liability as presumption of ownership.

Banks or lending institutions should not require, as a policy, the signature of the spouse on a mortgage loan unless the property given as security for the mortgage loan is jointly owned by the husband and wife. If the property is in the wife's name the lending institution has the right to demand signature of the wife since the property will be the sole security. However, the husband's signature should not be required as a matter of course.

The primary asset in a mortgage loan is the real property offered as security. Therefore, only the owner of the real property is liable and should be required to sign documents. As a matter of convenience most lending institutions have adopted the policy of requiring the spouse to cosign the mortgage loan.

Women should resist signing a mortgage loan if the property owned by the husband and offered as security is of sufficient value to insure payment of the mortgage loan. Also, women should resist a lending institution's demand that a husband sign the mortgage loan if the real property is owned by the wife and is of sufficient value to secure the loan.

Contrary to popular belief, women can and do secure home mortgage loans in the Virgin Islands. The expressed policy of the Virgin Islands banking community is that of extending credit to any creditworthy applicant irrespective of sex, who demonstrates the financial ability to service the debt incurred. One must qualify under the bank's standard of creditworthiness.

The ability of females to secure credit was greatly enhanced by passage of the Equal Credit Opportunity Act (Title VII of the Consumer Protection Act, as amended, 15 U.S.C. §1601 et seq.) which states that creditors may not discriminate against an applicant on the basis of sex in any aspect of a credit transaction. The federal law places specific limitations upon the circumstances in which a creditor may require information concerning the spouse or former spouse of an applicant. Also, the creditor shall not require the signature of the applicant's husband or fiance.

PUBLIC HOUSING

The major problem confronting women who desire public housing is the fact that the demand for public housing units greatly exceeds the supply. Otherwise, women with families encounter no sex discrimination, for public housing in the Virgin Islands is available to both males and females who meet the Housing Authority's need and income eligibility.

It is estimated that approximately 75 percent of all Virgin Islands public housing units are occupied by households headed by women. Furthermore, 75 percent of the homes purchased under the Virgin Islands Housing Authority Home Ownership Program were purchased by women. However, single persons (male and female), encounter greater difficulty than persons with families. The reason for the difficulty is that federal law

(Housing Authorization Act of 1976) limits the number of public housing units for singles to a number not to exceed 10 percent of the total units available.

By virtue of another federal statute (24 C.F.R. Chapter VIII, Part 812) single persons are given preference for admission to the units if each qualifies as elderly, disabled, handicapped, or displaced. Thus, if 10 percent of the available units are already rented to single persons and the single person does not qualify as elderly, disabled, handicapped or displaced, the likelihood of obtaining a unit is quite small.

THE PHYSICALLY ABUSED FEMALE

The following material on physical abuse of women is submitted by the Office of the Attorney General of the United States Virgin Islands on St. Croix, which is responsible for the prosecution of misdemeanor crimes. This report concerns only cases reported on St. Croix.

St. Croix, the largest of the three United States Virgin Islands, has an estimated population of 45,000 and is the site of large industries such as Hess Oil and Martin Marietta. Beginning in the boom years of the 1960's many persons from other Caribbean islands entered St. Croix to work both in tourist services and industry. These people, frequently called aliens, are subject to the supervision of the Immigration and Naturalization Service. The number of aliens is unknown, but at times has been estimated to constitute one-third of the population of St. Croix. Additionally, a large segment of the population is Hispanic, the greatest numbers of which come from nearby Puerto Rico.

The office of the Attorney General serves the function of ombudsman to the St. Croix community. Each day citizens appear to report such things as bad debts, non-support, paternity, mental incompetency cases, zoning violations, and the occurrence of misdemeanor crimes. The greatest number of reports concerns assaults by males upon females.

The following material concerns cases of abuse on women reported to the St. Croix offices in 1976 and 1977. The names of the persons involved have been deleted and

only their relationship (husband/wife, etc.) is noted. Most of the cases are not brought to trial. They are terminated prior to trial. This report will survey the submitted data, explain the procedures involved upon filing a report of abuse, and provide explanations of why so few abused women pursue their complaints in the criminal courts of St. Croix.

Procedure Followed Upon Report of Physical Abuse

The victim of physical abuse who appears at the St. Croix office is first interviewed by a complaint clerk. The clerk records the victim's account of the incident, lists witnesses for trial, and determines appropriate criminal charges. The victim thereafter meets with an assistant attorney general to discuss the case.

The attorney determines whether the case has prosecutive merit by further inquiry into the facts. Often it becomes obvious to the attorney that the victim will not pursue the matter in a formal courtroom proceeding and that issuance of an arrest warrant or summons would be futile. At other times the attorney realizes that as presented the case would not result in a conviction.

When faced with the fact that the female has been victimized but that there will be no criminal trial which would result in a conviction, the attorney may follow one of several courses: suggest that the parties have an informal conciliation hearing before a judge; schedule a conference in the Attorney General's Office; or, send a warning letter to the aggressor.

Both the conciliation hearing and conference in the Attorney General's Office have the same goal. Each seeks to have the parties make peace with one another. At the office conference the aggressor is informed that if he does not comply with the law, he will be arrested. In the presence of the aggressor, the victim is told that she is to immediately notify the prosecutor if the aggressor attempts to harm her; upon notice a warrant for arrest will be issued. Generally, this procedure is viewed as a success by the female victim because for once she is empowered to prevent the beatings inflicted upon her.

The warning letters utilize the same principle as the office conference. The aggressor is told that a criminal

complaint has been made against him, that at this time charges will be held in abeyance, and should the prosecutor be notified that he has not ceased abusing the victim, a warrant of arrest will issue.

Of the 156 cases reported for 1976 and 1977, 31 office conferences were held and 15 letters were sent. Six cases were referred for conciliation hearings before a judge.

Women Who Will Not Pursue The Abuse Complaint To Trial

All too often the battered female states at the initial interview that she does not want the man who abuses her to be arrested and brought to trial. Nonetheless, she asks that something be done to stop her mate from constantly humiliating her.

There are many reasons for such a request. The most obvious is economic. The women who visit this office are invariably those from the lowest economic bracket. (Despite the fact that battered wives belong to all income groups, those from the middle and upper classes do not come forward to report the crime.) These women, who are responsible for the second highest birth rate in the world, are the mothers of many small children. They are without education and skills and cannot afford to alienate the person who provides shelter and support to them and their children. They often state that they cannot leave their husbands because they have no place to go and no adequate job available. They fear that the man would terminate their relationship and leave them and their children with nothing. In addition, they realize that imprisonment would cut away at the husband's source of income (he could well lose his job during incarceration) or that a fine, regardless of its amount, would severely affect their funds.

The Immigration and Naturalization Service is also a factor to be considered by the battered wife. As non-citizens the aliens must comply with laws regarding their tenure as residents in the United States territory. The non-citizens constantly fear that they will be required to return to their home islands, which are poor and offer no opportunities. The alien wishes to "make no waves" that could bring her to the attention of the authorities.

The battered alien wife fears that Immigration authorities, upon learning of the arrest and conviction of her husband, will somehow arrange to remove such an undesirable person from the community. But most importantly, the battered alien wife fears her husband's power with the Immigration authority. It is generally the husband who petitions for her and the children to enter this jurisdiction and it is he who usually applies for her permanent residency "green card." The woman fears his complete control over her status and does not want to alienate him in a manner which would prompt him to withdraw his petition or application. Hence, she asks only that he be sent a warning letter or be brought into the Attorney General's office for a conference.

Frequently the female appears to make a report and then does not sign a complaint. This phenomenon occurred 43 times in 1976 and 1977. The reason for this is simple: the woman, who appears immediately after the incident and is often crying, changes her mind after making the initial report. She goes home to the aggressor and continues to live with him. At a later date she is again beaten and reappears at the Attorney General's office, this time requesting only a conference or warning letter. If the office procedures still prove to be futile, the woman again appears and finally takes the case to court. But even at the trial level the woman asks that the charges be dropped. She asks only that the judge warn the defendant not to beat her. Should she testify against her husband and there is a finding of guilty, the woman often pleads with the judge not to send him to jail.

Thus, the battered woman has few avenues open to her. She wishes to "teach a lesson" to her mate in order to end her abuse but she cannot pursue the matter in the courts because in the end she and her children would suffer.

The following statistics show the disposition of cases reported and reveal how few of them were taken to trial.

<u>TRIED IN COURT:</u>	<u>1976</u>	<u>1977</u>
Not guilty	1	1
Guilty-jail sentence	2	1
Guilty-suspended sentence	3	2
Guilty-fine	1	3

<u>TRIED IN COURT: (Con'd.)</u>	<u>1976</u>	<u>1977</u>
Guilty-sentence unknown	0	1
Pending	<u>0</u>	<u>2</u>
TOTAL	7	10
 <u>DROPPED AT TRIAL LEVEL:</u>		
At request of victim	11	14
Victim failed to appear	3	0
Defendant failed to appear	<u>0</u>	<u>2</u>
TOTAL	14	16
 <u>NO FORMAL CHARGES FILED:</u>	 18	 25
 <u>PROCEDURES OTHER THAN TRIAL:</u>		
Conciliation hearing suggested	3	3
Attorney General's office conference	10	21
Warning letter	<u>3</u>	<u>12</u>
TOTAL	26	36
Miscellaneous	6	8
TOTALS	61	95

Statistics for the number of battered females in St. Thomas and St. John are not as thorough as those of St. Croix. From the available statistics the breakdown is as follows:

<u>TRIED IN COURT:</u>	<u>1976</u>
Not Guilty	7
Guilty - jail sentence	1
Guilty - jail sentence suspended	9
Guilty - fine	5
Guilty - sentence unknown	1
Pending	<u>2</u>
TOTAL	25

DROPPED AT TRIAL LEVEL:

At request of victim	5
Victim failed to appear	1
Defendant failed to appear	5
	—
TOTAL	11

NO FORMAL CHARGES FILED:

Statistics not available

PROCEDURES OTHER THAN TRIAL:

Compromise	7
Parties warned	1
	—
	8
TOTALS	44

Proposed Avenues to Aid the Abused Female

Citizens who are concerned with the existence of physical violence on females usually state that swift and harsh jail sentences will put an end to the problem. Unfortunately, this proposal is not a panacea for the problems experienced by the women who visit this office. The women who are victims of felonious assaults (e.g. those who are stabbed, shot, tortured) are not seen by this office. Instead, their cases are presented by the United States Attorney in the District Court of the Virgin Islands and the aggressors are given lengthy jail sentences.

The women who visit the office of the Attorney General are those who undergo frequent abuses which are viewed by society as less serious, almost inconsequential, offenses. In fact, many persons from the islands ruled by non-American law believe that the male is allowed to discipline his mate by physical means. As a result, the abused female is often ignored despite the fact that she is constantly humiliated by beatings.

The easiest answer to this situation cannot be realized. If the abused woman were capable of an independent economic existence from the male, she could leave him and support herself and children. But the woman who is lacking in education or skills, as our clientele are, cannot assert independence and walk away. It is a vain hope to think that the average abused woman in the Virgin Islands is capable of generating enough income on her own. It is also unrealistic to think that alimony and child support payments, should the parties divorce, would be adequate since the male counterpart is also under-skilled and undereducated.

If the abused woman could somehow be shown that her predicament is recognized as serious and that she will not be left to fend for herself and her children, it is likely that the woman would pursue her criminal complaint. But, until this is done, the abused woman will continue to drop the charges and return to her abuser because she has no where else to turn.

It is necessary that the abused woman be given support. She should have available some temporary shelter where she and her children may go when their home life becomes unbearable. Instead of being forced to return to the home because she has nowhere else to go, a sanctuary with sympathetic personnel should be available. The personnel at such a sanctuary should not only offer emotional support to the abused woman; they should also be capable of securing permanent housing and employment for the woman. Although public funds and housing are limited, particularly for the alien woman, all that are available should be made known to the abused female and efforts to secure them should be made. Legal counsel should also be attached to this sanctuary to advise the woman regarding her rights to property and support.

A woman placed into this environment, albeit temporarily, would at least realize that she is not alone and that it is not mandatory that she be forced to reside in a home where she is subjected to physical abuse. With this realization, the woman would be more likely to insist that the aggressor be tried and punished in the criminal courts.

At present the outlook for the abused female in the Virgin Islands is dismal. One gesture by the community showing

its concern would not solve the problem. It would, however, make the predicament less ominous and show the abused woman that she can fight against the forces more powerful than she.

NOTE ABOUT THE AUTHOR

Edith Lucille Bornn is a native of St. Thomas, Virgin Islands. After graduation from Barnard in 1945, she attended Columbia Law School and received her LL.B degree in 1948. Shortly after admission to the New York State Bar, she accepted a position as legal research assistant with The Caribbean Commission stationed in Port of Spain, Trinidad, which position afforded her an opportunity to travel to all of the countries and territories in or bordering on the Caribbean Sea.

For three years she served as law clerk to Federal District Court Judge, Herman E. Moore, and in 1955 went into private practice of law and continues in private practice today.

Mrs. Bornn has been active in community affairs from her return in 1951. She has been president of The Women's League of St. Thomas many times. She is currently president of the League of Women Voters of the Virgin Islands. In 1973 the Business and Professional Women's Club of St. Thomas chose her as "Woman of the Year."

Mrs. Bornn is presently serving as Chairman of the Law Enforcement Planning Commission for the Virgin Islands, and also is Chairman of the Virgin Islands International Women's Year Coordinating Committee.

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Thanks go to the following women attorneys in the Virgin Islands for their research: Kathy Coleman, Joyce Glason, Brenda Hollar, Sharon Nolan and Polly Winter. Adrienne Palmer, an attorney in private practice in St. Thomas contributed the material on Inheritance & Estate Tax and Tax Aspects of Divorce & Separation.

FOOTNOTES

1. 2 V.I. Op. A.G. 219.
2. 3 V.I. Op. A.G. 24.
3. 16 V.I.C. §36.
4. 16 V.I.C. §32.
5. 16 V.I.C. §61.
6. 16 V.I.C. §68.
7. 16 V.I.C. §69.
8. 16 V.I.C. §297.
9. 16 V.I.C. §261.
10. Government of the V.I. v. Prince, (Municipal Court, St. Thomas and St. John 1971), 9 V.I. 147.
11. 16 V.I.C. §461.
12. 16 V.I.C. §462.
13. 16 V.I.C. §§70 and 71.
14. 16 V.I.C. §63.
15. Mark Pascal and Diane Pascal v. Charley's Trucking Service, Civil No. 76/707, (District Court of the Virgin Islands, Division of St. Thomas and St. John).
16. Donastorg v. Adkins, Civil No. 75/122 (District Court of the Virgin Islands, Division of St. Thomas and St. John).
17. 14 V.I.C. §1706.
18. S. 7769, 12 Leg. of the Virgin Islands, Regular Session (1978). §1706. Conviction on Testimony of alleged female victim.

(a) A person may be convicted of rape on the sole testimony of the alleged female victim if such testimony is supported by other evidence tending to:

(1) establish that the alleged female victim was subject of sexual penetration at the time of the alleged occurrence;

and

(2) establish the lack of consent of the alleged female victim.

19. 14 V.I.C. §1701, 1702, 1703.
20. 14 V.I.C. §2061.
21. U.S. Bureau of Census; Current Population Reports, Series P-20, No. 827. Marital Status & Living Arrangements: March, 1975, Issue December, 1975, Table 1, page 8.
22. U.S. Dept. of Commerce, Bureau of the Census, A Statistical Portrait of Women in the U.S., April 1976.
23. 15 V.I.C. §84.
24. 15 V.I.C. §84.
25. 15 V.I.C. §10.
26. 15 V.I.C. §10(a).
27. 15 V.I.C. §10(a)(1).
28. 15 V.I.C. §10(d).
29. 15 V.I.C. §10(e).
30. 15 V.I.C. §10(c).
31. 15 V.I.C. §351.
32. 15 V.I.C. §353.
33. 15 V.I.C. §356.

34. National Commission on the Observance of International Women's Year, Legal Status of Homemakers, W-10.
35. Kenneth M. Davidson, Ruth Bader Ginsburg, and Herma Hill Kay, Texts, Cases and Materials on Sex-based Discrimination, St. Paul, Minnesota, West Publishing Company. pp. 117-148.
36. Duncan, Greg J. and Morgan, James N., Five Thousand American Families-Patterns of Economic Progress, Vol. III, p. 185, Survey Research Center, Institute for Social Science, University of Michigan, Ann Arbor, Michigan.
37. Information collected from the Virgin Islands Department of Vital Statistics for the year of 1975-1976. Breakdown of 1065 marriages as to residency: 531 St. Croix, 18 St. John, 385 St. Thomas, 7 Puerto Rico, 92 Continental U.S., 23 British West Indies, 8 other, 1 not stated.

Breakdown of 364 divorces as to residency: 12 St. Croix, 2 St. John, 45 St. Thomas, 10 Puerto Rico, 64 Continental U.S., 129 British West Indies, 19 other, 83 not stated.
38. 16 V.I.C. §104 (amended 1973).
39. 16 V.I.C. §104(b) (amended 1973).
40. Cf.: Burch v. Burch, 195 F2d 799, (C.A. Virgin Islands 1952) This was a case in which cruel treatment of the wife by husband did not bar his obtaining divorce on grounds of incompatibility of temperament. However, her claim for alimony was not precluded due to the fact both parties were at fault.
41. 16 V.I.C. §107(2), (repealed April 24, 1973). Although repealed, compare the same effect that 16 V.I.C. 104(b) allows; see footnote 39, supra.
42. 16 V.I.C. §109(4), (amended 1973) Prior to amendment the statute provided: "for the delivery to the wife, if she is not the party in fault, of her personal property in possession or control of her

husband at the time of judgment." After amendment the statute provided: "for the delivery to the wife of her personal property in the possession or control of the husband at the time of judgment."

43. 16 V.I.C. §109(6) (amended 1973).
44. 16 V.I.C. 104 (as amended).
45. Knowles v. Knowles, 9 V.I. 360, 354 F. Supp, 293 (D.V.I. 1973).
46. Todman v. Todman, Civil No. 76/879. (District Court of the Virgin Islands, Division of St. Thomas and St. John). Memorandum Opinion filed July 6, 1977.
47. Dyndul v. Dyndul, (3d Cir. 1976). 541 F. 2d 132.
48. 33 V.I.C. §2305(d).
49. 28 V.I.C. §7(d).
50. 4 V.I.C. §76 (amended by Act No. 3876).
51. 16 V.I.C. §109.
52. 16 V.I.C. §110.
53. Rogers v. Rogers, No. 153/1977. (Territorial Court of the Virgin Islands, Division of St. Thomas and St. John).
54. Hodge v. Hodge, Civil No. 76/686 (District Court of the Virgin Islands, Division of St. Thomas and St. John).
55. 16 V.I.C. §109(3)
"...the Court...further decree:
(3) for the recovery from [sic] a party determined to be in need thereof an amount of money, in gross or in installments, as may be necessary for the support and maintenance of such party."
56. Poe v. Poe, 7 V.I. 30, 409 F. 2d 42, (C.A. 3rd 1969).
57. 16 V.I.C. §341.

58. 16 V.I.C. §342,
59. 16 V.I.C. §352(b),
60. 16 V.I.C. §352(c),
61. 16 V.I.C. §371.
62. 16 V.I.C. §391 et seq.
63. Public Law 93-647.
64. Monthly report of Director of Paternity and Child Support Division of Department of Social Welfare.
65. Report from the cashier of the Collection Division of the Department of Law.
66. 15 V.I.C. §824, 826.
67. 404 U.S. 71 (1971).
68. 15 V.I.C. §823.
69. 15 V.I.C. §825.
70. 15 V.I.C. §823.
71. 15 V.I.C. §826 (a).
72. 15 V.I.C. §826 (b).

RECOMMENDATIONS OF THE HOMEMAKER COMMITTEE*
(All Adopted by the Commission)

REFORMING ESTATE, INHERITANCE, AND GIFT TAX LAWS**

The IWY Commission recommends that the provisions of the Internal Revenue Code relating to estate and gift taxes be amended to eliminate taxation on all transfers of property between husband and wife at death, and on all gifts between husband and wife during their lifetimes.

The Commission further recommends that State legislatures amend their tax laws to eliminate laws that provide for inheritance or gift taxes in transfers between husband and wife.

COVERAGE OF HOMEMAKERS UNDER SOCIAL SECURITY

The IWY Commission recommends that the homemaker be covered in her own right under Social Security to provide income security for the risks of old age, disability, and death. The Commission further recommends that the Secretary of Health, Education, and Welfare be directed to give a high priority to developing an administration proposal for achieving this purpose.

*Copies of the recommendations with supporting position papers are included in the report of the Commission "...To Form a More Perfect Union..." Justice for American Women available from the Government Printing Office, Washington, D.C. 20401.

**The Secretary of the Treasury recommended abolition of these taxes in transfers between spouses to the Ways and Means Committee of the U.S. House of Representatives in testimony of March 22, 1976.

INHERITANCE RIGHTS OF SPOUSES

The IWY Commission recommends that State inheritance laws on disposition of property when a person dies without a will (intestate) be amended to provide that the surviving spouse's share is:

- (1) if there is no surviving child or parent of the person who dies, the entire estate;
- (2) if there are surviving children all of whom are children of the surviving spouse also, the entire estate;
- (3) if there are surviving children one or more of whom are not children of the surviving spouse, one-half of the estate.

The Commission recommends further that State Bar Associations, especially women members, and the National Conference of Commissioners on Uniform State Laws in order to provide greater considerations of equity review and redraft (a) the provisions when there are no surviving children but there are surviving parents, and (b) the provisions for a "forced share", or "widows election".

ECONOMIC PROVISIONS OF DIVORCE LAWS

The IWY Commission urgently recommends that State, county, and city commissions on the status of women, and other organizations concerned with the welfare of children and dependent spouses, actively seek amendments in State divorce laws where necessary to assure that as a minimum the economic protections of the Uniform Marriage and Divorce Act* for dependent spouses and children are included.

*National Conference of Commissioners on Uniform State Laws, Uniform Marriage and Divorce Act (1970 version and 1974 version). Order from National Conference of Commissioners on Uniform State Laws, 1155 East Sixtieth Street, Chicago, Illinois 60637.

The Commission further recommends that State legislatures review and revise their divorce laws, adopting as a minimum the economic protections of the Uniform Marriage and Divorce Act.

The Commission recommends also that in addition to the protections of the Uniform Marriage and Divorce Act the following additional items be seriously reviewed and considered: (a) an effective provision requiring disclosure of assets, such as that in the New York law (Section 250 of the Domestic Relations Law effective September 1, 1975); (b) authorization of child support until age 26 for children who are attending school; (c) the property divisions provisions that were in the 1970 version of the Uniform Marriage and Divorce Act; (d) specific mention of loss of pension rights as a factor to be considered in distribution of property; and (e) inclusion of a statement of intent such as that in Assembly Bill 995 introduced in the Wisconsin Assembly in 1975.

The statement of intent reads as follows:

It is the intent of the legislature that a spouse who has been handicapped socially or economically by his or her contributions to a marriage shall be compensated for such contributions at the termination of the marriage, insofar as this is possible, and may be reeducated where necessary to permit the spouse to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. It is further the intent of the legislature that the standard of living of any minor children of the parties be maintained at a reasonable level, so that insofar as is possible, the children will not suffer economic hardship.

DISPLACED HOMEMAKERS BILL

The IWY Commission recommends that the Administration endorse H.R. 10272, known as the "Equal Opportunity for

Displaced Homemakers Act," which provides for establishing multi-purpose service programs for displaced homemakers to help them through a readjustment period so as to become self-sufficient members of society.

GOVERNMENT COLLECTION OF DATA ON DIVORCE, ALIMONY,
PROPERTY DIVISION, CHILD CUSTODY, AND CHILD SUPPORT

The IWY Commission strongly urges that the 1976 Survey of Income and Education* which is to be conducted by the Census Bureau include questions which will provide answers to the following:

- How are children of divorced parents being supported, i.e., what proportion of the support is being contributed by each parent and by the Government as welfare?
- In what proportion of divorces is alimony awarded and in what amount?
- In what proportion of cases is child support awarded and in what amount?
- How is property divided?
- To what extent are alimony and child support awards being collected?
- To what extent are fathers getting custody of children? Are mothers paying child support in such cases?

*Through the cooperation and interest of the Department of Health, Education, and Welfare, some of the information requested will be collected in the 1976 Survey of Income and Education. The Department hopes to find collection of the additional data requested plus other information on single parent families.

- What are the relative economic situations, after divorce, of the spouse with custody of children and the other spouse?
- What is the economic status of women who are divorced after many years of homemaking and little labor force experience?

The Commission further recommends that such data be secured in each decennial census.

STATE HELP IN COLLECTING CHILD SUPPORT PAYMENTS FOR
FAMILIES NOT ON WELFARE

The IWY Commission recommends that Sec. 455(2) of Public Law 94-88, which requires the termination on June 30, 1976 of Federal support to administrative costs for child support collection services for non-AFDC mothers, be amended to eliminate the deadline.

USEFUL PUBLICATIONS

1. Bernard, Jessie, The Future of Marriage, 1973, A Bantam Book, published by arrangements with World Publishing Company, \$1.95.
2. Bingaman, Anne K., "The Impact of an ERA on the Financial Rights of Married Women: An Overview," November 1975 issue of Pepperdine Law Journal, in press.
3. Citizens' Advisory Council on the Status of Women, "The Equal Rights Amendment and Alimony and Child Support Laws," and "Recognition of Economic Contribution of Homemakers and Protection of Children in Divorce Laws and Practice." Single copies free from Council, Room S3306, U.S. Dept. of Labor Building, Washington, D.C. 20210. Tel: (202) 523-6538.
4. Conlin, Roxanne, Equal Protection Versus the Equal Rights Amendment--Where Are We Now, 24 Drake Law Review, 259 at p. 289.
5. Cooley, Edward W., "The Exercise of Judicial Discretion in the Award of Alimony," VI Law and Contemporary Problems, 213, Spring 1939.
6. Foster, Henry H., Jr., and Freed, Doris Jonas, "Law and the Family," New York Law Journal, October 26, 1973, p. 1.
7. Freed, Doris Jonas and Foster, Henry H., Jr., "Economic Effects of Divorce," VII Family Law Quarterly 275, Fall 1973. Order from American Bar Association, 1155 East Sixtieth Street, Chicago, Illinois 60637. \$3.00.
8. General Accounting Office, New Child Support Legislation - Its Potential Impact and How to Improve It, Report to the Congress by the Comptroller General of the United States, B-164031(3), April 1976, Washington, D.C. Available from your Congressman or Senator.

9. Goode, William J., Women in Divorce, The Free Press, 877 Third Ave., New York 10022, 2nd Printing 1969, \$3.50.
10. Hopson, Dan, "The Economics of Divorce: A Pilot Empirical Study at the Trial Court Level," 11 Kansas Law Review 107, 1962.
11. Kay, Herma Hill, "Making Marriage and Divorce Safe for Women: 60 California Law Review 1657, 1972. Order from Fred B. Rothman and Co., 57 Leuning Street, South Hackensack, New Jersey 07606, \$3.50.
12. Krauskopf, Joan M. and Thomas, Rhonda C., "Partnership Marriage: The Solution To An Ineffective and Inequitable Law of Support," 35 Ohio State Law Journal, 558 (1974). Order from Ohio State Law Journal, 1659 N. High Street, Columbus, Ohio 43210, \$3.00. Tel: (614) 422-6829.
13. Marriage, Divorce, and Family Newsletter, Betty Berry, editor, P.O. Box 42, Madison Square Station, New York, New York, 10010. Subscriptions \$7.70 for individuals, \$12.00 for organizations, and \$10.00 for overseas subscribers.
14. Nagel, Stuart S. and Weitzman, Lenore J., "Women as Litigants," 23 Hastings Law Journal, 171, November 1971.
15. National Commission on the Observance of International Women's Year, Recommendations of the Homemaker Committee on divorce, inheritance and estate tax, probate law, and social security coverage of the homemaker. Secretariat for International Women's Year, D/IWY, Room 1004, Department of State Building, Washington, D.C. 20520. Tel: (202) 632-8888.
16. National Conference of Commissioners on Uniform State Laws, "Uniform Marriage and Divorce Act" (1970 version and as amended in 1974) and "Uniform Probate Law." Order from National Conference of Commissioners on Uniform State Laws, 645 N. Michigan Avenue, Chicago, Illinois, 60611, \$1.00 each.

17. National Council on Family Relations, Journal of Marriage and the Family, Vol. 33, No. 4, November 1971. Special Issue on "Violence and the Family," 1219 University Avenue, S.E., Minneapolis, Minnesota 55414, \$3.50.
18. Riederer, Henry A., "Marriage Dissolution Trends: An Analysis of a Missouri Bar Survey," IV Family Law Quarterly, 184, January 1970.
19. Ross, Susan C., "The Rights of Women," An American Civil Liberties Union Handbook, Discus Books, \$1.25.
20. Rutman, Laurence D., "Departure From Fault," 1 Journal of Family Law, 181 (1961).
21. Sassower, Doris, "Matrimonial Law Reform: Equal Property Rights for Women," Testimony before the Joint Matrimonial Committees, N.Y. City Bar Association and the N.Y. County Lawyers Association, January 14, 1972, in 44 N.Y. State Bar Journal 406 (1972).
22. Walker, Kathryn E. and Gauger, William, The Dollar Value of Household Work, 1973, 25¢. Order from Communication Arts, 170D - MVR, N.Y.S. College of Human Ecology, Cornell University, Ithaca, New York 14850.
23. Walzer, Stuart B., "Divorce and the Professional Man," IV Family Law Quarterly, 364, December 1970.
24. Weitzman, Lenore J., "Legal Regulation of Marriage: Tradition and Change," 62 California Law Review, 1169, July-September 1974. Reprints available from California Law Review, University of California at Berkeley, 14 Boalt Hall, Berkeley, California 94702, \$2.00 Tel. (415) 642-7562.

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NATIONAL COMMISSION ON THE OBSERVANCE OF
INTERNATIONAL WOMEN'S YEAR
Department of State
Washington, D. C. 20520

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National Women's Political Caucus; Congressional Advisor
to the U.S. Delegation to the UN World Conference on
IWY in Mexico City, 1975

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