What You Need To Know about

The Law and You

The Guyana Association of
Women Lawyers - 2003

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What You Need To Know about

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Acknowledgements

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Cartoons: Simon Harris
Illustrations: Danuta Radzik
Foreword

As you may be aware, the Guyana Association of Women Lawyers launched The Law and You Leaflet Project in July, 1992. This project was successful in that 500,000 leaflets dealing with 31 topics in the law were distributed all over Guyana extending to as far as Pomeroon, Linden and Corriverton, and the response has been overwhelming.

It is therefore your response that has encouraged us to take further advantage of the generosity of our sponsors, Futures Fund, the first producer of this booklet & UNICEF who funded the re-print. This updated re-print will be available in libraries, schools, places of work & the University of Guyana.

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Making a Will

What is a will?
A will is a document, which sets out what you want to happen to your property, called your ESTATE, after you die.

You do not have to make a will but if you die without having made one then the law and not you will determine what happens to your estate.

A person who makes a will is a TESTATOR or TESTATRIX and dies TESTATE. If you do not make a will you will die INTESTATE and the law relating to INTESTACY will apply to the distribution of your estate. See Section Number 2 for more about intestacy.

In a will a testator usually appoints someone to look after, which is to administer, her/his estate. That person is called an EXECUTOR or EXECUTRIX. More than one executor can be appointed.

When someone is appointed to administer an estate, that person is called an ADMINISTRATOR or ADMINISTRATRIX.

Those who benefit under a will by receiving a gift or property, called a LEGACY are known as BENEFICIARIES.

Not all wills are valid
If your will is to be valid, that is legally binding, there are several conditions that have to be met.

1. A will must be in writing.

2. You must have the capacity to make the will, which is you must be over 18, of sound mind and not acting under the influence or coercion of anyone else.

3. The will must be signed or acknowledged by you unless you are too ill or frail, when someone else in your
presence and on your instructions can do it. The signature must be at the end of the will as everything underneath it will be invalid. Anything in the nature of a signature will do, for example a thumbprint or initials. A thumbprint should be witnessed by a Justice of the Peace.

4. Two (2) persons must witness the signing of the will. They have to be able to see your signature but do not have to know that what they are witnessing is a will or what is in it. Unless there are at least 2 other witnesses neither a witness nor her/his spouse can benefit under a will.

5. A will must be REVOCABLE, that is you must be able to cancel it later if you wish.

6. You can dispose of property by sale or gift before you die. If you die before the transaction is complete your executor or administrator can complete the transaction after your death. If you make a gift of property it will have to be completed as it cannot be completed after your death.

Here is an example of a valid will:

LAST WILL AND TESTAMENT I Lily Small of 13 Old Street, Newtown, being of Sound mind & body hereby revoke all wills formerly made by me.

I appoint Fred Persaud of 25 High Street, Newtown and James Brown of 18 Main Street, Newtown to be my executor(s) and direct that all my debts and funeral expenses shall be paid as soon as convenient after my death.

I GIVE AND BEQUEATH to my sisters Joan and Cherry Small my jewellery and to my brother Alfred Small my stereo set. The remainder of my property is to go to my daughter Alice Small.

Signed by the said testator in the presence of us, present At the same time, who at her Request and in her presence and in the presence of each other have subscribed our names as witnesses.

Lily Small

1. S. Hope, 7 Stone Road Newtown.
2. R. Field, 54 Sand Lane Newtown.
Altering a Will
A will only takes effect upon death. If after you have made a will you wish to make some changes to it you can do this making a CODICIL. A Codicil has to be executed in the same way as a will and once it has been executed it becomes part of the will.

Canceling a WILL
You can revoke, that is cancel, a will in 3 ways:

1. By intentionally physically destroying it, such as burning it or tearing it up.

2. By a later will or codicil that makes it clear that the earlier will is cancelled, for example by disposing of all your property.

3. By marriage unless it is made with marriage to particular person in mind.

Unless it has been physically destroyed you can REVIVE, that is make valid again, a revoked will.

A WILL once made should be kept in a safe place. A testator should not give copies of a WILL to persons. It is recommended that the original will be deposited in the Supreme Court Registry Probate Division for safe keeping. This will only be opened after you die.

The Family and Dependents Provision Act
Until the beginning of 1991 once you made a valid will disposing of all your estate you had complete control over what would happen to your property after your death. Now, however, it is possible for relatives and dependants to apply to the court for an order for reasonable provision to be made for them out of your estate if they satisfy the court that you have not made adequate provision for them in your will. There is little you can do to avoid the operation of this Act. For further details see Section Number 22 entitled “The Family and Dependents Provision Act”.
Intestacy

Dying Intestate
When a person dies leaving a WILL that person is said to die TESTATE and her/his property, or ESTATE as it is called, is dealt with according to the wishes of the deceased as set out in the will. For information about making a will see Section Number 1.

Where, on the other hand, a person dies without leaving a will that person is said to die INTESTATE and as there is no will containing the deceased’s wishes what happens to her/his estate is governed by the INTESTACY RULES.

HERE IS A SUMMARY OF THE INTESTACY RULES

A. Where There is a Widow or Widower
The position is as follows depending on whether there are any children:

<table>
<thead>
<tr>
<th>CHILD/CHILDREN</th>
<th>1/3</th>
<th>2/3</th>
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</thead>
<tbody>
<tr>
<td>Widow/Widower</td>
<td></td>
<td>Child(dren)</td>
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<table>
<thead>
<tr>
<th>NO CHILDREN</th>
<th>1/2</th>
<th>1/2</th>
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<tbody>
<tr>
<td>Widow/Widower</td>
<td></td>
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<td>if not</td>
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<td>Alive Sisters &amp;/</td>
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<td></td>
<td>Or Brothers or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If none or not alive</td>
</tr>
</tbody>
</table>
(NO CHILDREN cont’d)

Grandparents
or
if not alive
Aunts &/or Uncles
If there is none of the
above the widow or
widower gets all.

B. Where there is no widow or widower

The position is as follows depending on whether there are any children:

CHILD/CHILDREN
All

NO CHILDREN
All to Parents
or
If not alive
Sisters &/or Brothers
or
If not or not alive
Aunts &/or Uncles

If there is none of the above the estate goes to the State.

Notes

1. “Children” includes children born out of wedlock.
2. Relatives of the half blood rank equally with those of the whole blood.
3. If any of the above is dead their children inherit their share.
4. Persons who are entitled to share of the estate are called BENEFICIARIES.
5. A beneficiary can **RENOUSE BY DEED** her/his share of the estate in favour of another beneficiary.

**The Family & Dependants Provision Act**

Until the beginning of 1991 there was nothing that could be done to stop the intestacy rules from being strictly applied. It is now possible for relatives and dependants of the deceased to apply to the High Court for order for reasonable provision to be made for them out of the estate. They must satisfy the court that what, if anything, they will get under the intestacy rules is not enough. For more information see Section Number 23.

**Dealing with an Intestate Estate**

Before an intestate estate can be dealt with one or more persons, called **ADMINISTRATOR**, have to be appointed by the High Court to be responsible for the administration of the estate. The document appointing administrators is called **LETTERS OF ADMINISTRATION**.

For information on obtaining letters of administration see Section Number 3.

It is usual for the person or persons who are the major beneficiaries of the estate to apply for letters of administration. If none of the beneficiaries wants to administer the estate the Public Trustee may be asked to do so. If someone is owed money by the estate she/he can apply for letters of administration if none of the beneficiaries do so.

Only persons with lead status e.g. a party to a legal marriage may apply for letters of administration - A common law spouse may not apply. If there are children of the union, the children, if over age, may apply.
Personal Representatives

When a person dies, her/his property or ESTATE as it is called, is dealt with by one or more personal representatives as directed by the WILL left by the deceased or the INTESTACY RULES.

A will is a document in which the person making it, called the TESTATOR, states what she/he wants to happen to her/his estate after she/he dies. For information about making a will see Section Number 1.

If a person dies without leaving a will, that is she/he dies INTESTATE, the law contained in the Intestacy Rules governs what must be done with the estate. For more information on intestacy see Section Number 2.

Personal representatives are called EXECUTORS if appointed by will and ADMINISTRATORS if there is no will. Administrators are appointed by the High Court.
Grants of Representation
Before personal representatives can deal with an estate they must obtain a grant of representation from the High Court authorising them to act.

The grant issued to executors is called a Grant of PROBATE while administrators are granted LETTERS OF ADMINISTRATION. If an Executor or intended Administrator is unable to apply she/he can appoint someone by Power of Attorney.

How to Obtain Probate or Letters of Administration
Before a grant of representation can be issued the following things must be done:

1. An OATH AND STATEMENT OF ASSETS AND LIABILITIES must be delivered to the Commissioner of Internal Revenue. The statement is a list of the assets and liabilities of the estate (i.e. property owned by and debts owed by the deceased when she/he died). The oath is a sworn statement confirming that the contents of the inventory are correct.
   Other documents must be delivered including:
   (a) a copy of the death certificate;
   (b) the will, if any; and
   (c) a copy of the transport/title to immovable property
   (d) certificates of valuation of the assets.
   (e) a letter from a bank or share registry giving the value of the bank account or share at the date of death
   (f) a Power of Attorney, if applicable

   Estate duty was abolished in 1991 but if the gross value of the estate (i.e. the total value of the assets) is more than $100,000.00 a PROCESS FEE of ½ per cent of the gross value is payable. For example, if the gross estate is worth $200,000.00 the process fee will be $1,000.00.
   When the process fee, if any, has been paid a certificate will be issued by the Proper officer appointed by the Commissioner of the
2. Once the Commissioner of Internal Revenue’s certificate has been obtained the application for Probate or Letters of Administration can be made to the High Court. The following documents must be filed with the application:

(a) the Commissioner of Internal Revenue’s certificate;
(b) the death certificate;
(c) the will, if any;
(d) a list of the assets and liabilities as accepted by the Commissioner of Inland Revenue; and
(e) the executor’s or intended administrator’s oath. This is an affidavit (a sworn statement in writing) by the executor or intended administrator containing information about the deceased and an undertaking to administer the estate properly.

(g) A Power of Attorney, if applicable.

Duties of Executors and Administrators

Once a grant of Probate or Letters of Administration has been issued the personal representatives must:

(1) Collect in all the assets of the estate including money owed to the deceased.
(2) Put at least 2 weekly notices in the Official Gazette and a newspaper calling on people owed money by the deceased to send in their claims within 3 months of the first notice.
(3) At the end of the 3-month period pay off all debts, including the funeral expenses.
(4) Distribute (i.e. share out among the beneficiaries in accordance with the will or the Intestacy Rules) what is left of the estate after all debts have been paid. This should if possible be done within a year after the grant of representation.
(5) Give an account of their handling of the estate to the beneficiaries and the High Court.
Personal representatives must not make a profit out of their dealings with the estate. They can however take expenses and are entitled to any gift left to them in the will.

If personal representatives fail to carry out their duties properly they will be personally liable to the beneficiaries.

If a personal representative is unable or unwilling to carry out her/his duties, she/he can renounce the grant. A new person will have to be appointed to carry out those duties.
Getting Married

Who can get married?
Both parties to a marriage must be single (i.e. unmarried, widowed or divorced) and adult (18 years or older).

If either party is under 18 the consent of her/his parents or guardians must be obtained. If consent is refused an application can be made to the Chief Justice for leave to marry.

Who cannot get married?
Marriages between certain persons are forbidden and any such marriage celebrated will be void (i.e. without any legal effect). A marriage will be void if:

(a) either party is already married to someone else and therefore is not single;
(b) either party is under 16
(c) both parties are of the same sex:
(d) the parties are certain kinds of blood relations, e.g. parent & child; grandparent & grandchild; brother & sister of the whole or half blood; niece & uncle; nephew and aunt;
(e) the parties are certain kinds of relations by marriage, e.g. a woman & her step-son or son-in-law or a man and his step-daughter or daughter-in-law;
(f) either party doesn’t understand that she/he is getting married;
(g) one of the parties goes through the ceremony under threats or is mistaken as to the identity of the other party or as to the nature of the ceremony or is drunk; or
(h) any of the formalities haven’t been compiled with.
Formalities before marriage
Before a wedding can take place banns must have been published or a Minister’s licence or superintendent registrar’s certificate obtained. (Note however, that a marriage officer (see below) without banns, a licence or certificate can perform a marriage if one of the parties is at the point of death.)

1. **Banns** must be published in a church registered for that purpose in the marriage district in which the parties live on 3 **Sundays** during a period of not more than 3 months before the wedding. Publication must be by a minister of the Christian religion who is marriage officer (see below) or someone acting under the minister’s control.

If the parties live in different marriage districts banns must be published in each district.

At least 2 days before the time required for first publication the parties must give the minister a written notice containing required information.

2. **A Minister’s licence** (called a **marriage licence**) must be applied for at least 2 days before it is required. The application is by **petition to the Minister of Home Affairs** containing the required information. All relevant documents (i.e. birth certificates to prove age; death certificates and/or decrees absolute to prove single status) must be produced and a fee paid. If an **objection** is made to the marriage the Minister will decide the issue.

3. **A Superintendent registrar’s certificate** is obtained upon **notice** given to the superintendent registrar of the marriage district in which the parties lived for the past 7 days or more. If the parties live in different districts they must each give a separate notice. The notice must contain the required information and all relevant documents must be produced (see above). The particulars are entered in the **Marriage Notice Book** that may be inspected by anyone at any reasonable time. The superintendent registrar must clearly pub-
lish a notice of the marriage outside her/his office. Once the notice has been up for 21 days the superintendent registrar will issue a certificate to any party who gave notice to her/him upon payment of the required fee.

If anyone makes an objection to the marriage within the 21-day period the superintendent registrar will refer the objection to a judge of the High court who will decide the issue. In the meantime no certificate will be issued.

The publication of banns, Minister’s licence and a superintendent registrars’ certificate becomes void if the marriage doesn’t take place within 3 months of last publication/issue.

Banns will have to be published all over again or a new licence or certificate obtained before the marriage can take place.

The Ceremony
A superintendent registrar or a marriage officer may perform a marriage. The Minister of Home Affairs appoints marriage officers. They may be ministers of the Christian religion or persons of the Hindu or Islamic religions.

A wedding must take place between 6 a.m. and 9 p.m. if performed by a marriage officer and between 8 a.m. and 4 p.m. if performed by a superintendent registrar.

The wedding can take the form the parties choose but there must be 2 or more witnesses apart form the marriage officer or superintendent registrar and the consent of each party to take the other as husband or wife must be clearly stated in the presence of the witnesses and the marriage officer or superintendent registrar.

If the wedding takes place in a superintendent registrar’s office no religious ceremony can be performed but the parties can have a religious ceremony afterwards.
Registration of Marriages
As soon as a marriage has taken place it must be registered in the marriage register book kept by the marriage officer or superintendent registrar who performed the ceremony. The entry contains details of the parties and the marriage.

A duplicate original entry is also made on a separate sheet of paper. This will later be sent to the Registrar General of Births & Deaths. Both parties must sign both originals.

A certified copy of the entry is given to the parties. This is called the marriage certificate and is used as evidence of the marriage, e.g. in divorce proceedings. Further certified copies can be obtained from either the Registrar General or the marriage officer or superintendent registrar who has custody of the marriage register book containing the original entry. The parties’ names, date and place of marriage must be given.

Change of Name and Title
Although a woman has traditionally taken her husband’s surname on marriage, there is no legal requirement that she do so. She is perfectly free to keep her own name if she wants. If she decides to take her husband’s surname she can keep it after the marriage ends, whether on death or divorce.

Instead of being called “Miss” before marriage and “Mrs.” After, more and more married and unmarried women are adopting the title “Ms.”

Citizenship
A foreigner that marries a Guyanese citizen can apply to be registered as a citizen of Guyana immediately after the marriage.

Termination
A marriage is terminated by:
(a) Death of a spouse
(b) A grant of Decree Absolute by the High Court, see Section 5
Divorce for more information.

A voidable marriage, or one that has no legal effect e.g. if it is not consummated by the parties or one or both of the parties lacked the capacity to marry, has to be annulled.

A **voidable** marriage is valid unless and until a decree of nullity is made. A marriage will be voidable if, for example, either party is incapable of consummating it (i.e. completing it by sexual intercourse) or wilfully refuses to consummate it.
Divorce

The grounds for divorce
In Guyana divorce is still based upon the court being satisfied that one of the parties to the marriage is at fault. Divorce by consent is not allowed.

The three main grounds for divorce are
1. Adultery
2. Cruelty
3. Malicious desertion, i.e. when one party has left the matrimonial home without either a good reason or the consent of the other party, or has treated the other party so badly that she/he has been forced to leave. This is the ground most often used.

The Petition
The party who wants the divorce (the petitioner) files a petition in the High Court asking for a decree of divorce against the other party (the respondent) and setting out the ground on which the petition is based.

Service
The petition must be served upon the respondent. There are two types of service:

Personal Service. The petition is served by a marshal of the Supreme Court or an authorised lawyer’s clerk. The respondent must be pointed out to the marshal or clerk by the petitioner or someone else who knows the respondent.

Substituted Service. By either registered airmail post when
the respondent lives abroad and the petitioner has her/his address, or advertisement in a newspaper in Guyana or the country where the respondent lives when the petitioner does not have her/his address.

Defended Divorce
A divorce is defended when the respondent enters an appearance and files an answer or answer and cross prayer. The respondent may not only ask that the petition be dismissed but that she/he be granted a divorce instead.
A defended divorce takes much longer to come up for hearing than an undefended divorce and costs more in lawyer’s fees.

Undefended Divorce
If the respondent does not enter an appearance or file an answer the petition will be put on the undefended list for hearing.

The Hearing
If the petition is undefended the petitioner goes into the witness box and testifies as to the contents of the petition. If the judge finds that the grounds on which the petition is based have been proved she/he will grant a Decree Nisi of divorce.
If the petitioner is abroad and cannot return to Guyana for the hearing a special application can be made for her/his evidence to be given by affidavit (a sworn statement in writing).
If the petition is defended each party gives evidence and is cross-examined by the lawyer for the other party. The same applies to any witness each party has. The judge decides which party has proved her/his case and either grants a decree nisi or dismisses the petition.

A certified copy of the marriage certificate must be handed in at the hearing as proof that the parties were legally married.

A DECREE NISI DOES NOT END THE MARRIAGE. THIS ONLY HAPPENS WHEN THE DECREE NISI HAS BEEN MADE ABSOLUTE.
Decree Absolute

Six weeks after the decree nisi has been made the petitioner can apply to have it made absolute. If the petitioner does not apply the respondent can do so nine weeks after the decree nisi.

The Attorney-General or other interested party can intervene to stop the decree nisi being made absolute on the ground that the nisi was improperly obtained, but this very rarely happens.

Maintenance and Custody

Orders for maintenance of a wife and for maintenance and custody of children can be applied for at any time before decree absolute. It is better to have arrangements as to maintenance and custody finalised and made part of the order nisi.

Judicial Separation

A decree of judicial separation can be obtained on basically the same grounds as a decree of divorce. It frees the party obtaining it from the obligation to live with the other party.

It is usually applied for by people who have a religious objection to divorce.

A DECREE OF JUDICIAL SEPARATION DOES NOT END THE MARRIAGE, SO NEITHER PARTY CAN REMARRY.

Nullity

When a marriage is VOID or VOIDABLE the party not at fault can apply for a decree of nullity.

A void marriage has no legal effect at all and a decree of nullity simply confirms this. A marriage will be void if:

(1) Either party is under 16 years old; or
(2) One of the parties is already legally married to someone else.

A voidable marriage is valid unless and until a decree of nullity is made.

For more examples of void and voidable marriages see Section Number 4 on Getting Married.
Adoption

What is Adoption?
When a child is legally adopted the adopter becomes to all intents and purposes the child’s parent, and the natural parents are permanently deprived of their parental rights.

An adopted child is treated by the law as if she/he were the natural child of the adopter. For example, she/he has full rights to inherit property on the death of the adopter, and marriage between an adopter and the person she/he adopts is prohibited.

Who can be adopted?
A person under 18 years old who has never been married and lives in Guyana.

Who can Adopt?
You can apply to adopt a child if:
(1) you are domiciled (i.e. have your permanent home) and live in Guyana;
(2) you are a Guyanese national resident outside of Guyana;
(3) you are a former Guyanese national who has acquired the citizenship of any country other than Guyana; or
(4) you are 25 years old and are at least 21 years older than the child, or are 18 years old and a relative of the child, or are the mother or father of the child.

N.B.
1. A mother or father of a child may adopt a child either alone or jointly with her/his spouse. Spouse includes a single man and single woman living together in a common law union at least
seven years prior to the adoption. “Father” includes a man who has acknowledged a child to be his own and has previously contributed to the child’s maintenance.

2. If you are married you and your husband/wife should apply jointly. If only one of you applies the other must consent.
3. If you are male you will only be allowed to adopt a female child to whom you are not related in very exceptional circumstances.

Parents’ Consent
The court may dispense with the consent of a parent if:–
(a) the parent has abandoned, neglected or constantly ill-treated the child;
(b) a person obligated to maintain a child by a court order refuses or neglected to do so for a long time;
(c) where the person required to consent cannot be found or is incapable of consenting or unreasonably withholds her/his consent.

Adopters’ Consent
If your spouse cannot be found, is incapable of giving consent or is permanently separated from you, such consent may be waived by the court.

When Can An Adoption Order Be Made?
An adoption order cannot be made unless:
(1) the child has been continuously in your care and possession for at least 6 (six) months immediately before the date the order is made; and
(2) you apply to the Court for an adoption order within 3 (three) months from the expiration of that period of care and possession.
(3) where the adopter is a Guyanese national resident outside of Guyana or a former Guyanese national who has acquired the citizenship of any country other than Guyana the period is 1 (one) month.
How to Apply For An Adoption Order

1. Application to the Adoption Board
The first step is to apply to the Adoption Board on the specified application and medical forms. You will then be invited to the Board’s office for an interview. You must take the child’s birth certificate with you to the interview. Other documents may be required, such as your marriage certificate if you are married or your decree absolute if you are divorced.

2. Consent of the child’s parents
The Board will interview the child’s parents, explain to them the effect of an adoption order and ask them to give their consents to the adoption in writing on the specified forms. If the whereabouts of the child’s parents are unknown the Board will advertise for them in the newspapers.

3. Appointment of the Board as guardian ad litem
Where the parents’ consents have been obtained or it has been decided to ask the court to do without one or both of them the Board will write and advise you to file your application for an adoption order in the High Court. It is advisable to have the application papers prepared by a lawyer. A copy of the papers should be served on the Board. The Court will appoint the Board guardian ad litem of the child (i.e. the guardian of the child for the purposes of the adoption proceedings).

4. The Board decides whether to recommend adoption
A representative of the Board will visit you in your home and talk with you and the child. A report will then be written and presented to a meeting of the Board. You and the child will be invited to this meeting. The Board will decide whether to recommend adoption and will inform the Court of its decision. In coming to its decision the Board must consider what will be in the best interests of the child.

5. a. If the Board decides not to recommend adoption you can appeal to a judge of the High Court within 14 (fourteen) days after being
told of the decision.
b. If the Board recommends adoption you will be sent a notice telling you when you, the lawyer and the child should attend Court. The application will be heard in private, in the judge’s chambers. The Secretary of the Board will confirm that the Board approves of the adoption and if the judge is satisfied that everything is in order she/he will make the adoption order.

6. The adoptive certificate
Either you or your lawyer should deliver a certified copy of the adoption order to the Registrar General and request that the details be entered in the Adopted Children Register. A short while later you should be able to buy a certified copy of the entry called an “adoptive certificate” from the Office of the Registrar General (above the GPO Building). This serves the same purpose as a birth certificate.

It Is Illegal
(1) to advertise either that you have a child for adoption or that you want to adopt a child;
(2) without the permission of the Court to pay someone to adopt your child, to give or receive payment for giving up your child for adoption.

In the case of an adoption by a Guyanese national resident outside of Guyana, a report from the Social Services agency in that country is required to be sent to the Adoption Board. This report is compiled after the authorities visit and interview the prospective adopters. There is also provision for the Guyana Consulate in the country to issue a Certificate to the effect that the applicant is a fit and proper person.

Adoption Proceedings should not be submitted for valid immigration procedures.
Child Maintenance

A child has the right to be maintained by both parents whether she/he is born in or out of wedlock.

The father of a child born out of wedlock is the man whom a court has adjudged to be the father or the man who has acknowledged the child as his and has contributed to the child’s maintenance.

IF A PARENT FAILS TO MAINTAIN HER/HIS CHILD

The child or the person with whom the child lives can apply to the magistrates’ court for a maintenance order.

The parent will be summoned to appear before a magistrate and can be arrested if s/he doesn’t obey the summons.

If the person summoned as the father of the child (the putative father) says that he is not the father (i.e. denies paternity) the magistrate will hear what he and the mother and any witnesses have to say and then decide whether or not the putative father is the father of the child. If the putative father’s name is on the child’s birth certificate this will be very strong evidence against him.

If and when paternity is not in dispute the magistrate will make an order saying how much the parent summoned must pay as maintenance for the child. In deciding on the amount to be paid the magistrate will look at the means of the parent summoned and of the other parent or anyone else who is under a duty to maintain the child.
At the time of writing this leaflet the **maximum amount** that a parent can be ordered to pay for each child is **$250 a week**.

The **order will last until** the child is 16 or 18 if she/he is at school or any other place of education or longer if she/he cannot maintain her/himself because of ill-health.

An **appeal** against a maintenance order can be made to the Full Court of the High Court (see Section Number 20 on Going to Court).

**Enforcement**

If a parent against whom a maintenance order has been made:

1. leaves home and hides in order to avoid having to pay under the order s/he will be guilty of an offence and can be fined $150 or imprisoned for 3 months;
2. fails to make payments, arrears can be recovered by:
   1. **distress**, i.e. having her/his personal belongings (except clothing, bedding and tools of trade worth up to $100) taken and sold and the proceeds of sale used to pay the arrears. If she/he does not have enough property to cover the arrears she/he can be imprisoned instead.
   2. **Attachment**, i.e. having the amount due deducted from money owing (e.g. wages) to her/him. **But note**: no order can be made for the attachment of wages of a manual worker.

**NOTE**

**YOU MAY BE UNDER A DUTY TO MAINTAIN CHILDREN OTHER THAN YOUR OWN.** Both men and women are required to maintain every child which their legal or common law husbands/wives have living with them as part of the same family at the time of the marriage or when they started living together. And if parents fail to maintain their children the grandparents must do so.
CHILD MAINTENANCE ORDERS IN MATRIMONIAL PROCEEDINGS
A maintenance order for a child may also be made in matrimonial pro-
ceeding (i.e. proceedings between a legally married couple) in both
the magistrates’ court and the High Court.

Magistrates’ Court
One party to the marriage may ask the court for relief on the ground
of misconduct by the other (called the defendant), including wilful
neglect to maintain any child whom the defendant is legally bound to
maintain. The magistrate may, among other things, order the de-
fendant to pay child maintenance.

In fixing the amount to be paid the magistrate will take into account
the means of both parties. At the time of writing this leaflet the
maximum amount that can be ordered to be paid is $250 a week
for each child.

The order will last until the child reaches 16 or 18 if she/he is at
school or any other place of education. If the parties start living to-
gether again the order will automatically end 6 months afterwards.

The magistrate can:
(1) order payment to be made to the complainant, someone on her/
his behalf or the court collecting officer;
(2) make a temporary order for maintenance to last until the case is
finally decided;
(3) vary the amount to be paid up or down if satisfied there is good
reason for doing so.

Enforcement is again by distress and/or attachment (see above)
and appeal can be made to the Full Court of the High Court.

The High Court
In divorce, judicial separation and nullity proceedings (see Section
Number 5) the court can make maintenance orders for the children
of the marriage at any time before final decree.
There is no limit to the amount that can be ordered to be paid. The court will fix the amount it considers reasonable after looking at the means of both parents.

An order will usually last until the child reaches 18.

**Enforcement**

There are various ways in which payment can be enforced, including:

1. **Judgment summons.** The court examines the parent in default as to her/his means and makes another order for payment.

2. **Attachment** for earnings or other amounts due. **But note:** no order can be made for the attachment of wages of a manual worker.

3. **Execution sale** of property owned by the parent in default. the court takes possession of and sells the property and the proceeds of sale are used to pay the amount sue.

An appeal against a maintenance order made by the High Court can be made to the Court of Appeal.
Domestic Violence & Child Abuse

The Domestic Violence Act 1996
The Act is intended to give protection in cases involving domestic violence. Domestic Violence under the Act includes:

- Offences such as murder or attempted murder.
- Manslaughter
- The use or threat of any other form of violence, physical or emotional injury or assaults.
- Rape offences.
- Harassment such as persistent verbal abuse.
- Psychological abuse such as blackmail, repeated isolation, depriving a person of adequate food or rest, deprivation of custody of children or conduct which dishonours, discredits or scorns the personal worth of a person.
- Persistent following of a person from place to place.
- Watching the house, place of work, business or place of education of a person.
- Making persistent unwelcome phone calls to a person.
- Using abusive language or behaving towards a person in such a way as to cause annoyance or result in ill-treatment to that person.
- Drugging or intoxicating a person with drugs, or alcohol or hypnotising them.
Applications under The Act

The person applying for an Order is called the Applicant, while the person against whom the relief is sought is called the Respondent. The Act applies to both males and females and to all members of a household.

Applications may be made to the court by:
- Persons who are or have been married to each other.
- Persons who are common law spouses or former common law spouses.
- Persons who live together or used to live together in the same household except as employees, tenants, lodgers or borders.
- Relatives.
- Persons who are or were in a relationship of a sexual nature.
- Children and persons with disability.

Applications can be made on behalf of these persons by parents, guardians, social workers and police officers.
- Once the court is satisfied that she/he has sufficient understanding a child who is under 16 years old can apply for a protection order.
- A child between the ages of 16 to 18 years can apply on her/his own behalf.
- Qualified social workers.
- Police officers.

Applications may be made by the aforenamed persons themselves, but while it is not absolutely necessary that a lawyer be retained, it is advisable that one consult a lawyer, since the person against whom the application is made may seek the services of a lawyer to defend himself/herself and because persons are usually unfamiliar with court procedures.

Court Proceedings

The proceedings take place in the Magistrates’ court in the district where the conduct is alleged to have taken place and follow normal
The Act provides that Domestic Violence matters should be heard in private unless the court orders otherwise. The proceedings should not be published unless the court gives permission. In practice the courtroom may not be emptied when the proceedings are going on. An applicant should insist that her/his matter is heard in private.

If the respondent does not appear in court after proceedings have been served on her/him, the court may proceed in her/his absence or in some cases, issue an arrest warrant for the respondent to appear in court. It is usual for the applicant to call witnesses who can corroborate the evidence of violence meted out to her/him.

Care should be taken in presenting the factual circumstances to the court. It is advisable for the applicant to obtain the assistance of a counselor for emotional support.

Forms relating to the various types of applications, which can be made under the Act, are available at the Magistrates Courts or can be obtained from Attorneys-At-Law, the Women’s Affairs Bureau or other social service organisations.

Evidence on an application for a protection order may be given on affidavit, unless the court or another party to the proceedings wishes to call the person making the affidavit to give evidence.

**Types of Orders**
The court may make several orders on an application. These orders include:

1. A Protection Order.
2. A Tenancy Order.
3. An Occupation Order.

**Protection Orders**
Protection orders are commonly referred to as restraining orders and have the effect of forbidding a person to:
- engage in conduct complained of in the order;
- be on premises where a person lives or works;
- be on premises where a person goes for education;
- be on premises that a person often goes to;
- be in a particular place specified in the order;
- speak to or send unwelcome messages to a person named in the order; or
- Senior Police Officers at Police Stations may also grant station bail pending further investigations.

Remember that the Act cannot cure Domestic Violence. It should be seen as means of giving protection to persons who may be affected by acts of Domestic Violence.

We must all be vigilant and do what we can to stop such acts.

Say NO to VIOLENCE.
Rape and Sexual Assault

If you have been raped or otherwise sexually assaulted you should:

Contact the Police
Make a report to the police as soon as possible after the incident. If you are unable to contact the police yourself ask someone responsible to make the report for you either by telephoning or going to the police station.

When you go to the police station it is a good idea to have a friend or relative go with you.

You will have to give a statement to the police about what happened. You may find telling what happened and answering the police officer’s questions difficult but you should try to give as much detail as possible.

Any witnesses should also give statements.

Medical Attention
After you have made a report to the police you will be sent to doctor for a medical examination. Some of your clothing may be taken for a laboratory test.

If you are female a woman police officer or other responsible woman should go with you to the hospital or doctor’s surgery. If you are male a male police officer should go with you. If the victim is a child a parent or guardian should go too.

You should have a medical examination within 24 hours of the assault.

You must collect a signed medical report from the doctor within 48 hours of the medical examination.

Either you or the police should keep the medical report safely. It
will be needed as evidence if the matter goes to court.

When the police have taken your and any other statements they may arrest and charge the attacker.

What Happens at Court?
The police will tell you when you should attend court. When the attacker is charged she/he will be taken before a magistrate.

The attacker (who is known as the accused or defendant in court) may be represented by a lawyer. A trained police officer will present the case for the prosecution.

It is usual for the case not to be heard on the first day but to be put off for hearing on another day. The magistrate will announce the date agreed with the prosecutor and the accuser’s lawyer.

The accused may be remanded in custody or granted bail, i.e. allowed to go free once money or property has been lodged to ensure attendance in court for trial (see Section Number 24 on bail).

If the offense is indictable (i.e. is a serious crime which has to be tried before a judge and jury in the High Court, for example rape or attempted rape) a hearing (called a preliminary enquiry) will take place before the magistrate. At the end of the hearing if the magistrate decides there is enough evidence against the accused she/he will order that the accused stand trial in the High Court.

If the magistrate decides there is not enough evidence against the accused she/he will dismiss the case and discharge the accused.

If the offence is not indictable the magistrate will try it. At the end of the hearing the magistrate will find the accused guilty or not guilty. If the accused is found guilty the magistrate will sentence her/him.

Giving Evidence
Except for young children and persons with a mental handicap all victims of sexual assault have to give evidence at the hearing of the case.

If the offence is indictable evidence may have to be given twice; first in the magistrates’ court and then in High Court.

A police prosecutor in the magistrates’ court and State Counsel in the High Court will ask you questions. The accused’s lawyer will
ask more questions and perhaps a few more by the police prosecutor or State Counsel.

However personal and embarrassing the questions are you should try to answer them clearly and calmly. Only answer the questions asked: do not volunteer information.

The Protection of Your Privacy

Unless a magistrate or judge allows it, your name cannot be published in the newspapers or broadcast over the radio or television.

Hearings in both the magistrates’ court and the High Court can be held in private. If a private hearing is ordered by the magistrate or judge only those who are directly involved in the case are allowed in the courtroom.

IF THE POLICE DO NOT PROSECUTE THE ATTACKER YOU CAN EMPLOY A LAWYER TO BRING PRIVATE CRIMINAL PROCEEDINGS.

WHETHER OR NOT CRIMINAL PROCEEDINGS ARE BROUGHT AGAINST THE ATTACKER YOU CAN BRING A CIVIL ACTION FOR DAMAGES.

You can employ a lawyer to bring an action in the High Court for damages for assault.

But there will be little point in doing this unless the attacker has money or other property.
Registration of Births

Time for Registration
The birth of every child born in Guyana must be registered within 21 days of the birth.

Who must register?
Where the parents are married the father or mother is required to provide particulars to the registrar of births at the nearest registration center of the district in which the birth took place.

The registrar completes a registration form, which the parent then signs.

If, for any reason, neither the father nor the mother is able to register the birth, a nurse must register the birth.

If you live in a remote area you do not have to attend at a registration center but can send the particulars of the birth in writing to the registrar at the nearest registration center. This is usually the Community Health Centre.

Registration after 21 days
If the birth is not registered within 3 months of the baby being born, or within 9 months if you live in a remote area, you can go to a registrar and give the particulars for her/him to complete a registration form that you will then sign.

However, if more than 12 months have passed since the baby was born the birth can only be registered with the authority of the Registrar General.

Particulars to be given
The prescribed particulars which you must give to the registrar
who then enters them on the registration form includes: when and where the birth took place, the names, sex, race, weight and length of the child and details of the mother and father.

The name and surname of the mother have to be given as they were at the time of the birth as well as her maiden surname, her address, race, marital status, age, occupation and education.

If the parents are married the registrar will want to know the names, race, age, occupation and education of the father.

**Children born out of Wedlock**

If the parents are not married to each other the mother does not have to give details of the father if she does not wish to: the part of the registration form giving particulars of the father may be left blank.

Particulars of the father may however be entered (and can only be entered) at the joint request of the mother and the father, in which case both will sign the registration form. A father’s name cannot be added to the birth register after the birth is registered.

Entry of the father’s name on the registration form is evidence of paternity for the purpose of maintenance proceedings (see Section Number 11 on Child Maintenance) and could also be evidence of adultery if the mother or father is married to someone else at the time.

**Choice of Name**

The registrar will ask in what surname or family name the child is to be brought up. This does not need to be the surname used by either the mother or the father but it is usual for a child born in wedlock or whose parents are living together to take the surname or family name of the father.

The mother of a child born out of wedlock can give the child any forenames and surnames she chooses, even the father’s surname without his consent.

Parents usually choose a child’s forenames when registering the birth and the names may be confirmed later by religious baptism.

**If no forenames are chosen at the time of registration** the birth can still be registered with just the surname being given. The words
‘Not Stated’ will be put on the register form. Forenames given to a child within 12 months, after registration (or longer with the written authority of the local magistrate) can be entered by the Registrar General on a new registration form upon receipt of an application form signed by a parent. This applies if no forenames have been entered at the time of registration or if the forenames later given are different from those registered.

It is better to give the child a name at the time the birth is registered, since in some cases a Court Order will be required to insert a name at a later date.

Whilst there is no law against using different forenames and/or surnames at different times for different purposes this can be confusing for legal purposes. Anyone can change her/his forename and/or surname at any time simply by starting to use another name. But it is usual to make a deed poll (in case of a child the deed poll is made by a parent or guardian) formally evidencing the change of name to avoid difficulties in obtaining passports and school registration.

Re-registration upon Marriage of Parents of a child born out of Wedlock

If the mother and father subsequently marry they can apply to the Registrar General within 3 months of the marriage to have the birth re-registered.

Correcting errors on the registration form

A registrar may only correct minor clerical errors made on a registration form. Any other errors may only be corrected with the written authority of a magistrate.

Birth Certificates

A birth certificate contains the names, sex, date and place of birth of the child, the mother’s full name at the time of birth, her maiden name, and the father’s name and date of registration.

A birth certificate is not issued at the time of registration but must be applied for through the post office 30 days after registration.
Custody

What is custody?

Legal custody means the right to make major long-term decisions for a child, mainly connected with education, medical care, moral and religious upbringing and marriage.

Actual custody (also called care and control) means the right and duty to look after the child on a day-to-day basis.

An access order gives the parent with whom the child is not living the right to go on seeing the child.

Who is entitled to custody?

Both parents have equal rights to custody of their children, which can be exercised separately. This applies whether the children are born in or out of wedlock. (The father of a child born out of wedlock is the man who has acknowledged the child to be his and contributed towards the child’s maintenance before seeking to exercise his parental rights, or the man whom a court has found to be the father.)

If the parents cannot agree on a question affecting the child’s welfare, they may apply to High Court for a decision. In deciding such disputes the court has to regard the child’s welfare as the first and most important consideration.

If one parent dies the surviving parent will have all parental rights unless a guardian has been appointed by the deceased parent, or by the court, to act jointly with the surviving parent.

When a child is adopted all parental rights pass from the natural parents to the adoptive parents.

A step parent has no legal rights to custody of her/his stepchildren.
Agreement about custody
Parents who are divorcing or separating can continue to hold parental rights jointly without any order of the court. Where the children are to live and how often they are to visit the other parent can be informally agreed.

Disputes over custody and access
Disputes over custody and access can be taken by either or both parents to the court for a decision.

Which Court?
When a wife and husband are divorcing or bringing proceedings for judicial separation or nullity the High Court can make orders with respect to custody of the children of the marriage.

The High Court can also make orders for the custody of children born in or out of wedlock where the parents are living apart and an application is made by the parent with whom the children are not living.

The magistrates’ court has the power to make orders for the custody of children of a marriage while under 16 or upon application by either parent on the ground of misconduct on the part of the other.

How the court decides
Whatever the proceedings, the court has to regard the welfare of a child as the first and most important consideration. The court will not be interested, for example, in who was to blame for the break-up of the marriage unless that parent’s conduct seriously affects her/his abilities as a parent.

The factors which the court will take into account, will broadly be the same, whichever the court.

The mother will have the care of very young children except in very unusual circumstances.

If a child has been living with one parent for any length of time, the court will be reluctant to change this arrangement.

The court will be reluctant to split up sisters and brothers.
The older a child becomes, the more her/his wishes are likely to be taken into account. Where the conduct of one of the parents is directly relevant to the welfare of the child (for example, if the father has been convicted of indecent assault), this would be a most important factor. The ability to provide a good home and provide for the child’s other material needs is important.

**Joint custody**

In divorce proceedings the court can make a joint custody order. The child lives with one parent and the other has access but both make major decisions about the child’s welfare. In non-divorce proceedings the court cannot make a joint custody order. Legal custody can be granted to one parent only.

**Leaving the country**

When a custody order has been made in divorce proceedings the child must not be taken out of Guyana unless the court gives permission or the other parent gives written consent. The parent who wants to take the child abroad must give written consent. The parent who wants to take the child abroad must give a written undertaking to return the child if required to do so.

At any stage in divorce proceedings, either parent can apply for an order stopping the other from taking any child out of the country.

**Change of Name**

Once a custody order has been made the parent with custody cannot change the child’s surname except with a judge’s permission or the written consent of the other parent.

**Access**

The court may simply order reasonable access and leave it to the parties to make their own arrangements or it may specify what the access arrangements are to be as for example, “every other weekend from 9 a.m. Saturday to 5 p.m. Sunday”, or 10 a.m. to 5 p.m. every Sunday at maternal grandmother’s home”.
Parents can vary access arrangements by agreement or, if there is a dispute, can go back to the court and ask for a variation of the order.

**Access denied**

Only very rarely will the court refuse access to a parent, for example where a parent has sexually assaulted the child.

If the parent with whom the child lives makes difficulties over access or tries to stop it, the other cannot do much about it except return to the court.
Buying Goods

Every time you buy something you make a contract

You may think that contracts are complicated legal documents, which have little to do with you. This is far from the truth. Contracts are simply agreements that are legally binding. Very few kinds of contracts have to be in writing and many can be made without anything being said.

For example: if you go into a supermarket, take items from the shelves, go to a cash desk and pay the amount rung up by the cashier, a contract has been made even if you and the cashier haven’t exchanged a word.

One of the most common types of contracts is a contract for the sale of goods. It is this type of contract that is made whenever you buy goods of any kind, from a parcel of greens to a refrigerator. A contract for the sale of goods does not have to be in writing and, as the example above shows, it can be made simply by the way the buyer and seller act. See Section 18 on Buying and Selling Land.

What must the buyer do?

1. Take delivery of goods she/he has agreed to buy. If not the seller can sue for damage for breach of contract. The amount of damages will be the amount lost by the seller as a direct result of the buyer’s breach.
   For example: you agree to buy a load of yams from B for $5,000 but then fail to take delivery; B can only sell the yams to someone else for $4,000; B can sue you for $1,000 damages.

2. Pay for the goods. If not, the seller can sue the buyer for the price.
What must the seller do?

1. **Deliver the goods to the buyer.** If not, the buyer can sue the seller for damages for breach of contract. For example: C agrees to sell you a bicycle for $8,000 but then doesn’t deliver it; you have to pay D $10,000 for a similar bicycle; you can sue C for $2,000 (the difference between what you would have had to pay C and in fact paid D).

2. Comply with the implied terms, i.e. terms that are automatically part of the contract whether or not the buyer and seller discussed them. They are:

   (a) That the seller has the right to sell the goods. For example: if you buy a watch from E, which it turns out she stole from F, F can recover his watch from you (and you are entitled to a full refund from E).

   (b) That the goods are the same as their description. For example if you buy yams, you should not be forced to accept eddoes.

   (c) That goods sold by a business (i.e. not privately) are of **merchantable quality**, i.e. are reasonably fit for the purchase for which they are bought, bearing in mind how they were described, the price and other relevant matters, e.g. whether the goods are new or second handed. For example: if you buy from a shop a lamp, which is pictured on the box as red, and when you get it home it doesn’t work and in any case is green, the seller will have broken the contract with you on 2 counts- the lamp is not as described (green instead of red) and it doesn’t light your home (not of merchantable quality because it is not fit for its purpose). You will be entitled to return the lamp and get all your money back, provided you act quickly.

**N.B:** You will not be entitled to return the goods and get your money back but will only be entitled to damages if:

(i) you examined the goods before buying them; and/or
(ii) the seller pointed out the defects to you.
3. **Comply with any express terms**, i.e. promises about the goods actually made by the seller to the buyer. If the promise is so important that the buyer would not have bought the goods without it, if the seller breaks it the buyer can reject the goods and get a full refund. If the promise is not so important, if the seller breaks it the buyer will only be entitled to damages.

**Injury Caused By Faulty Goods**

If the person who is hurt by faulty goods was the buyer of the goods she/he can sue the seller for **damages for breach of contract** because the goods were not fit for their purpose. The seller is liable for damage caused by the defect even if the defect was caused by someone else (most often the manufacturer).

If, however, the injured person was not the buyer and so has no contract with the seller, she/he cannot sue the seller but can claim **damages for negligence** against the person responsible for the defect. (most often the manufacturer)

**Manufacturers’ Guarantees**

If you buy something, which has a manufacturer’s guarantee, read it carefully. You may have to sign and send it back before it has any effort or it may apply at once.

Whether or not you accept a manufacturer’s guarantee (by signing and returning it) you can still claim damages from the seller. **Accepting a guarantee cannot take away your rights against the seller.**

**Buyer Beware!**

Your rights against the seller may be taken away by the use of **exclusion clauses** such as these:

The Management is not responsible for loss or damage howsoever caused.

Notice

No

Money

Refunded

25. This contract is issued subject to the condition that all implied conditions, statutory or otherwise, do not apply to this agreement.
Once an exclusion clause can be seen by the buyer or her/his attention is drawn to it at the time of sale the seller will be able to rely on it. An exclusion clause cannot however be imposed by the seller upon the buyer after the contract has been made.

**Take Great Care** and never sign a written agreement without reading all of it, especially the long, complicated words in small print at the bottom of the page. If you do not understand what it says get someone (preferably not the seller or anyone who works for her/him) to explain it to you before you sign.
Hire Purchase

What is Hire Purchase?
Hire purchase is the most common method of obtaining goods without paying for them in full at one time. It is the method of paying for something by installments. People generally buy “on H.P.” when they don’t want or can’t afford to buy something outright. When you buy on hire purchase:

1. You pay for the goods gradually after you have taken possession of them.
2. You normally have to put down a deposit first.
3. You will end up paying more for the goods than if you had bought them outright.
4. If you don’t keep up the payments the goods can be taken back by the seller.
5. You will not actually own the goods until you’ve paid the last installment.

The Hire Purchase Agreement
When you buy something on hire purchase you will have to sign a hire purchase agreement with the seller. This will set out what you have to do in order for the goods to become yours and you should read it carefully, especially the small print.

If you don’t fully understand everything the hire purchase agreement says get someone (but not the seller or anyone who works for her/him) to explain it to you BEFORE you sign it.

Sellers of goods on hire purchase usually have standard forms of agreement so you will probably have little choice but to sign the agreement and get the goods or do without the goods. But if you do
decide to go ahead you should know what you’re getting into as you could end up out of pocket.

The seller will probably require you to give some security (e.g. A transport to land) or provide one or more guarantors (see Section Number 14 on Guarantees). Again, you will have little choice but do as required or go without the goods.

**Your Obligations**

Once you have signed a hire purchase agreement you must:

(a) take delivery of the goods from the seller;
(b) take reasonable care of the goods;
(c) not try to sell the goods (remember they will not belong to you until you have made the last payment) or do anything with them that is not allowed by the seller;
(d) pay the installments when due; and
(e) return the goods to the seller if the agreement comes to an end before the goods have become yours.
(f) keep the goods in your own custody and possession in Guyana.
(g) notify the seller of any change in address.
(h) use the goods for the purpose for which it was intended.

**If You Don’t Keep Up With Your Payments**

The agreement will almost certainly say that if you fail to make any payment when it is due the seller may:

(a) end the agreement;
(b) take back the goods;
(c) forfeit (that is keep) the payments that you have already made;
and either
(d) if the agreement contains what is called a minimum payments clause, make you pay the difference between what you have paid and the minimum payment set out in the agreement. For example: if the minimum payment set out in the agreement is $6,000.00 and you have only paid $2,000.00 you will have to pay the seller a further $4,000.00; or
(e) claim damages from you if she/he is out of pocket.
The Seller’s Obligations
The seller has the following obligations to you:
(a) to deliver the goods to you;
(b) to refund all money paid by you if it turns out she/he is not in fact the owner of the goods;
(c) to allow you to have possession and use of the goods without any interference;
and
(d) to take back the goods and refund all money paid by you if the goods are not what they were described to you as being or are not fit for the purpose for which she/he knows you want them. **For example:** if you make a hire purchase agreement for a red 3-piece suite, or a red 2-piece suite. And as a suite is obviously needed for sitting on, it mustn’t collapse as soon as anyone sits on it.

**Note however** that the seller may have put a term in the agreement excusing her/him from any or all of her/him obligations to you. It is possible that in some cases she/he may not be able to rely on this term. You should get advice if you have any complaints about the goods, no matter what the agreement says or the seller tells you.

**Remember:**
1. Read the agreement carefully and make sure you understand it before you sign. If in doubt seek advice.
2. If you fail to pay just one installment the goods may be taken from you even though you have already paid nearly all the installments.
3. It is illegal for a seller to discriminate against you on the grounds of sex, for example if you are a woman by requiring you to get a male guarantor.
Guarantees

What is a Guarantee?
A guarantee is a kind of contract, that is an agreement which is legally binding and which can be enforced in the courts. It is a promise to make good the failure of someone else to do what she/he has promised.

A simple example is where, in return for C lending D $1,000.00, G agrees that if D does not repay C she/he (G) will. C is the creditor, D the debtor and G the guarantor. Another word for guarantor is surety.

Another example of a guarantee, and one which is common in Guyana, is where, in return for company C sending employer D to study abroad, G promises that if D fails either to return and work for C for the agreed length of time or to repay the money spent by C on D’s studies she/he (G) will repay the money.

Does A Guarantee Have To Be In A Special Form?
No, but it cannot be enforced in the courts unless there is something in writing containing the main terms of the agreement and signed by the person against whom it is to be enforced.

The Liability Of The Guarantor
A guarantor will only have to pay the creditor if the debtor, fails to keep her/his promise to the creditor. The amount the guarantor will have to pay is limited to the amount agreed with the creditor.

The creditor does not have to try to recover from the debtor before enforcing the guarantee against the guarantor. It is enough that the debtor is in default.
Where there are several guarantors the creditor can recover in full against any one of them. None of them can refuse to pay because the others have not been asked to do so. However, having paid the creditor in full that guarantor can recover contributions from the others. For example: if A, B and C are guarantors for $12,000.00 and A pays the whole amount she/he is entitled to $4,000.00 from each of B and C.

The Rights Of The Guarantor

Against the debtor
1. As soon as the time for the debtor to pay the creditor has arrived the guarantor can require the debtor to make payment.
2. A guarantor who has paid the creditor can recover from the debtor all money properly paid under the guarantee.

Against the creditor
Once the guarantor has paid the creditor she/he is entitled to be placed in the same place in the same position the creditor was in as regards the debtor. For example: if the creditor has obtained judgment against the debtor she/he must assign it (i.e. pass the right to recover under it) to the guarantor.

Against co-guarantors
As stated above, a guarantor who has paid more that her/his share under the guarantee is entitled to contributions from the other guarantors.

Discharge Of A Guarantor
A guarantor who has paid in full under the guarantee will obviously be discharged (freed) from all further liability. A guarantor will be released from liability without having to pay anything if:

(1) a legally enforceable agreement for the guarantor to be releases is made between the creditor and the guarantor;
(2) the creditor alters the terms of the contract with the debtor without the agreement of the guarantor. For example: if G guarantees a loan to D of $10,000.00 and C and D later agree to in-
crease the loan to $20,000.00 without G’s agreement, G will be discharged;
(3) generally speaking, the creditor legally binds her/himself to give the debtor more time to pay;
(4) the creditor gives up any security which has been given by the debtor or takes a new security in place of the original one. For example: if D left a car with C as security, G would be discharged if C gave the car back to D before payment was made or exchanged the car for D’s motorcycle; or
(5) the debtor is released from the debt by the creditor.

WARNING

IF YOU AGREE TO STAND AS A GUARANTOR YOU MAY LOSE SOME OR EVEN ALL OF YOUR PROPERTY AND BE UNABLE TO RECOVER ANYTHING FROM THE PERSON YOU HAVE GUARANTEED.

YOU SHOULD THEREFORE THINK OVER VERY CAREFULLY ANY REQUEST TO BECOME A GUARANTOR AND MAKE SURE THAT IF YOU DO AGREE TO BECOME ONE YOU FULLY UNDERSTAND THE TERMS OF THE GUARANTOR BEFORE SIGNING IT. IF IN ANY DOUBT SEEK LEGAL ADVICE.
Powers Of Attorney

GUYANA
COUNTY OF DEMERARA

LIMITED POWER OF ATTORNEY

Be it known that on this 2nd day of March 1991, Before me, Indera Singh, Notary Public practicing in the City of Oldtown, County of Demerara, Republic of Guyana, personally came and appeared Simon Small of 67, Seventh Street, Oldtown, Demerara (hereinafter called the appearer), which appearer stated and declared that he had made, nominated and appointed and by these presents doth make nominate and constitute and appoint Denise Fung of 45 Ninth Street, Oldtown, Demerara, (hereinafter called the attorney) to be the true and lawful attorney of the appearer and on his behalf to do and execute the following acts deeds and things:

1. To let the appearer’s property at 12 Third Street, Oldtown, Demerara on such terms as the attorney shall think fit.
2. To collect all rents from the tenants of the said premises and to do all such acts and things as are necessary to recover arrears of rent in respect of the said premises.
3. To give notice to quit to any tenant of the said premises and to do all such acts and things as are necessary to recover possession of the said premises from any tenant.
4. Generally to do all such acts and things in connection with the letting of the said premises that the attorney shall think fit.

And the Appearer declared and agreed to ratify allow and confirm all and whatever the attorney shall or may lawfully do or cause to be done in and about the premises under and by virtue of these presents.

Thus done and passed in the City of Oldtown, County of Demerara, Republic of Guyana on the day and year first above written in the presence of the subscribing witnesses.

.....................................................
Simon Small

Witnesses
1. AND IN MY PRESENCE
   QUOS ATTESTER
2. NOTARY PUBLIC

What Is A Power Of Attorney

A power of attorney is legal authority to act for another person. The document by which such authority is given is called a power of attorney or the empowered or duly constituted attorney.

The giver of a power of attorney is called the principal and the person to whom it is given is called the attorney, or the empowered or duly constituted attorney.
Types Of Power Of Attorney

There are four types of power of attorney:-

1. **General Powers Of Attorney** by which the attorney can do everything possible for the principal.
2. **Limited Powers Of Attorney** by which the attorney can only do those things for the principal, which are clearly set out in the power.
3. **Special Powers Of Attorney** by which the attorney is authorized to perform one special act for the principal.
4. **Irrevocable Powers Of Attorney**, which are of two kinds:
   (a) for value; and
   (b) whether for value or not, for a fixed period of time.

   The seller may give an irrevocable power of attorney for value to the buyer of a property.

Requirements For A Valid Power Of Attorney

1. All powers of attorney must be in writing and executed by the giver of the power before a notary public and at least one but normally two witnesses. It is not necessary for the attorney to sign the power.

   Note however that if a power of attorney is made in the United States of America or any other non-Commonwealth country the execution requirements are different. There are several ways in which the power can be executed in order to be valid in Guyana but the simplest is for the execution to take place before an officer of a Guyana consulate or embassy.

2. Except for special powers of attorney under the Deeds Registry Act authorising the passing of a transport mortgage or lease, or empowering someone to apply for a grant of Letters of Administration of a deceased person’s estate, all powers of attorney must be registered in the Deeds Registry.
Revoking A Power Of Attorney

General and limited powers of attorney may be revoked (i.e. cancelled) at any time the principle likes.

The revocation must be in writing and filed in the Deeds Registry. A certified copy of the revocation must served on the attorney warning her/him of the date on which she/he will no longer have the power to act for the principal.

Irrevocable powers of attorney can only be revoked by:
(a) agreement between the principal and attorney; or
(b) death, disability (e.g. insanity) or bankruptcy of the principal.

Renunciation Of A Power Of Attorney

An attorney who changes her/his mind about acting for the principal may renounce the appointment.

The renunciation must be in writing and filed in the Deeds Registry. A certified copy must be served upon the principal.

Duties Of Attorney

1. An attorney must not make a secret profit for her/himself out of acting for the principal although she/he may take expenses.
2. An attorney must account to the principal for all money received and paid out on the principal’s behalf.
Insurance

What Is Insurance?

Insurance is a form of financial protection. In return for the payment of premiums the insurer agrees with the insured either to pay a specified sum on the happening of a specific event, e.g. death or accident, or to make good loss caused by the risk insured against, e.g. fire or theft.

Getting Insurance

If you go to an insurance company for any type of insurance you will be given a proposal form to fill in and sign. This will contain questions related to the kind of insurance you want (e.g. your health if you want life insurance or your property if you want fire insurance). The company will look at your answers to these questions and all other information (e.g. a medical report if you want life insurance) and decide whether to issue an insurance policy to you and if so, on what terms (as to payment of premiums etc.). If you accept the terms a policy will be issued and, generally speaking, will remain in force as long as you pay the premiums when due. (From now on the insurance company will be called the insurers).

1. If you are not truthful about or fail to disclose any fact which would influence the insurers in deciding whether to issue a policy and if so, on what terms, the insurers can avoid the policy and refuse to pay any claim.

2. If an insurance agent fills out the proposal form for you she/he will be treated as your agents and the insurers will be able to
avoid the policy if any important answers are incorrect.
(3) Generally, an insurance policy will only be valid if you have an interest in the subject matter of the insurance (e.g. you own the property insured against fire).

**Life Insurance**
1. You can insure your own life for your own benefit for as much as you wish. When you die the policy monies will be paid either to your personal representatives when she/he has obtained probate or letters of administration (see Section Number 3), or, if the policy states that it is made for the benefit of your husband/wife and children, directly to them.
2. If you are legally married you can insure the life of your **husband/wife** for as much as you wish.
3. If you are owed money you can **insure the life of a debtor** up to the amount of the debt owed.
4. If you are **murdered** the policy monies will be payable, but not to your murderer as the law does not allow someone to benefit from her/his wrongful act.
5. If you **commit suicide**: (a) while sane the policy monies will not be payable unless the policy expressly allows payment; (b) while insane the policy monies will be payable unless the policy expressly forbids payment.
6. You can **assign** (i.e. transfer) your right to receive the policy monies without the consent of the insurers. For example, if you get a mortgage to buy a house (see Section Number 18 on Buying & Selling Land) the mortgage company may require you to take out life insurance for the amount of the mortgage and to assign the policy to them, so that if you die they are sure of payment.

**Property Insurance**
1. If you insure your property against loss by fire and other risks (e.g. theft) a value is usually put on the property at the time the policy is issued. This will be the **sum insured**. You can never recover more than this amount.
2. If there is a **total loss** (e.g. the property is destroyed by fire or
stolen) you can recover the full sum insured.

3. If there is a partial loss (i.e. the property is not totally destroyed) you can recover up to the full sum insured. But:

4. If you are under insured (i.e. the value of the property is greater than the sum insured) and your policy contains what is called an “average” clause you will only be able to recover a proportion of a partial loss. For example: your car is worth $200,000 but only insured for $100,000; it is damaged and will cost $50,000 to repair; you will be treated as only half insured and will only be paid half of your loss, namely $25,000.

5. After the insurers have paid out on a claim they stand in your shoes against anyone responsible for causing the loss (called a third party). You must let the insurers use your name to sue a third party. If they recover more than their outlay you will be entitled to the balance. You must not give up your rights against a third party. If you do, you will have to repay the insurers the amount they could have recovered.

6. After payment of a claim the insurers become the owners of the property insured, or what’s left of it.

7. You can assign the right to receive policy monies without the consent of the insurers.

Compulsory Insurance Of Motor Vehicles

You must use or allow a motor vehicle to be used on a public road unless it is covered by a policy of insurance against liability for causing death or injury to or damage to the property of any person.

1. “Property” does not include your property, property in your possession or property carried in or on a motor vehicle.

2. The policy need not cover:
   (a) liability for death or injury to a passenger who is not a paying passenger or one carried because of her/his job (N.B. you cannot escape liability to a paying passenger, for example by putting a notice in the vehicle saying “All passengers carried at their own risk”);
   (b) death or injury to an employee in the normal course of her/his employment;
(c) liability for over $25,000 for one death or injury claim and $20,000 for one property claim and for over $125,000 for all death or injury claims and $100,000 for all property claims resulting from one accident.

3. **The policy must cover everyone who is going to drive the vehicle.** This may be just yourself, or a few named drivers or anyone driving with your consent. Your policy may also cover you to drive other vehicles.

4. **Your insurers must pay any judgment obtained against you if:**
   (a) You have a certificate of insurance;
   (b) The liability is covered by the policy (e.g. the policy may only cover the vehicle while it is being used for “social, domestic and pleasure purposes”, so that if a claim is made as a result of an accident which happened while the care was being used for any other purposes the insurers will not have to pay);
   (c) The liability is one which has to be covered by law (see above); and
   (d) Notice of the action was given to the insurers before or within 7 days after it had begun.

5. **Your insurers can take over and defend any claim on your behalf.**

6. **If a claim is for death or injury** the insurers cannot avoid payment on the ground of your breach of some kinds of policy condition (e.g. as to the age of the driver, number of passengers, or the things that must be done or not done after an accident). But the insurers can recover from you the amount they have had to pay.

**Temporary Insurance**
These are type of insurance where a single premium is paid e.g. insurance to cover medical expenses on holiday abroad is taken only for the duration of the holiday.
YOUR RIGHTS AT WORK

CAN I JOIN A UNION?
Yes. The Constitution protects your rights to join a trade union of your choice. If any one tries to stop you exercising this right you can take her/him to court.

Union recognition
Your trade union should be recognised by the employer so that it can negotiate pay and other conditions. If the employer refuses to recognise your union the union can ask the Minister of Labour to intervene. If this does not work your union may decide to take industrial action, such as going on strike.

Industrial action and picketing
There is no positive right to strike or to organise a picket. If you take industrial action you will probably be in breach of your contract of employment. In theory, your employer could sue you for breach of contract under certain circumstances. However, this rarely happens simply because it is not practical to sue everyone who goes on strike.

The Termination of Employment and Severance pay Act, 1997, (TESPA), provides for interruption in service due to industrial action. It therefore affects how service is counted.

YOUR CONTRACT OF EMPLOYMENT
Every worker has a contract of employment, that is a legal agreement with the employer, which sets out your rights and duties and the employer’s rights and duties towards you.
Unfortunately, your contract is probably not all written down in one place. Its terms will include things agreed to between you and your employer and, where there is a union, things agreed to between the union and your employer as well.

You will be able to find information about your contract of employment in:

- your letter of appointment; This usually sets out your job title; rate of pay; leave entitlement and allowances (if any). Your signing and return of a copy of the letter of appointment automatically creates a contract.
- your job description;
- a written contract of employment, if the employer provides one;
- the terms of a collective agreement (i.e. an agreement between your union and the employer) on matters such as pay, hours of work, which have been made part of your own contract;
- regulations made under Acts of Parliament fixing your minimum pay rate, hours of work, holidays with pay; and
- the (usually unwritten) “custom and practice” of your workplace.
- at the workplace, there may be a set of rules or regulations which govern matters of discipline and general terms and conditions of employment.
- there is now The Termination of Employment and Severance Pay Act, 1997, which establishes minimum standards of employment and the termination of such employment.

Your duties

Whatever the written documents says, there are certain legal duties you have towards your employer. These are:

- to obey all lawful and reasonable orders;
- not to commit misconduct;
- to give faithful and honest service, and
- to use reasonable skill and care in the work.

These points are important if, for instance, you are dismissed for
misconduct, or if you sue your employer for injuries received at work and the employer says you were responsible for your own injuries by your own negligence (i.e. not using “reasonable skill and care”).

**The employer’s duties**

Again, whatever the written documents say, the law says that an employer has certain duties towards her/his workers. These are:

- to take reasonable care for the employee’s safety; This is further set out in the Occupational Safety and Health Act, 1997 (OSHA). See Section #4 ‘The Law and You II’, pg. 66.
- to pay to agreed wages;
- not to require the employee to do unlawful acts; and
- to provide work for workers paid by results or commission if work is available.

**Remember:**

(1) Very often, what matters in practice is the collective agreement between the union and the employer and the various Acts of Parliament and regulations made under them which cover matters such as health and safety, pay, sex discrimination and so on.

(2) Your contract isn’t necessarily what the employer says it is: you and your union can argue about what the contract says, and in the last resort the court can be asked to decide.

**PAY AND HOURS OF WORK**

**Hours of Work**

The hours you have to work are usually agreed between the employer and the union. Where there is no collective agreement on hours, the employer decides how long you have to work, the length of the shift, the periods of rest and so on.

In some cases however, the law has laid down the maximum hours per day to be worked, the length and frequency of breaks, the hours of the day when work can be done and so on. You can ask your
union or the Ministry of Labour whether you are covered by these regulations.

**Holidays**
Your rights to be paid annual or other vacation leave are usually agreed between the employer and the union or fixed by the employer where there is no collective agreement on holidays.

There is, however, now the Holidays With Pay Act, 1995, which provides for the grant and regulation of annual holidays with pay for all categories of workers.

Many employees, including domestic workers, manual workers, clerical workers and watchmen, have their holiday entitlements fixed by law. What the law prescribes are minimum annual entitlements so there is nothing to prevent you or your union agreeing to more.

Basically, this Act states that every worker/employee should receive:

(a) For every month completed - 1 day
(b) For half-day workers - each half day counted as a day
(c) Daily/hourly workers - 1 day per every 20 days/160 hours worked.

For further details, see ‘The Law and You II’, pgs. 84-85
You can ask your union or the Ministry of Labour whether you are covered by these regulations.

Any term in a contract of employment providing for less holidays with pay than provided for under the regulations is of no effect.

**Wages and Salaries**
Your wage or salary is usually agreed to between the employer and the union, or fixed by the employer where there is no collective agreement on pay.

The minimum wages of certain employees are fixed by law. You can ask your union or the Ministry of Labour whether you are covered by minimum wages regulations.

Your employer must pay you in money, and in cash unless you ask
for a cheque.

If is illegal for your employer to:

(1) make it a condition of your employment that you spend your wages or any part of them in a particular shop or other place, in any particular way, or with any particular person; or
(2) dismiss you for failing to spend your wages as directed by her/him.

Deductions

Before paying you, your employer must deduct form your wage or salary your National Insurance contribution (the amount of which depends on the amount you are paid) and income tax, if you earn enough to have to pay it.

Your employer cannot make any other deductions from your wage or salary except for accommodation, grazing fees, tools, food, medicines or other goods supplied at your request or advances made at your request. In any event, the total deducted in any month cannot be more than one third of your wage or salary for that month.

Equal Pay

Under the Equal Rights Act women and men must receive equal pay for the same or similar work. For details see Section Number 21 on the Act.

SICK PAY

The general rule is that if you don’t work you don’t get paid, but your contract of employment may give you the right to sick leave with pay.

If you are paid your full wage or salary while you are off sick you cannot get NIS benefit (see below). What usually happens is that your pay is suspended so you can get sickness benefit and then your employer makes up the difference between the amount of benefit received and your full wage or salary. NIS does not pay hospital bills but your contract of employment may cover this and you may also be covered by a health insurance scheme to which you and your
MARTENITY RIGHTS

If you have paid enough NIS contributions and have been working long enough you are entitled to maternity benefit from the National Insurance Fund.

The amount you will be paid is 70% of your average earnings during the last 26 weeks. Maternity benefit is paid for 13 weeks or longer in special circumstances.

You are also entitled to a maternity grant if you or your husband have paid enough contributions.

The Prevention of Discrimination Act, 1997, now protects you from being dismissed due to pregnancy, or denial of special leave for maternity purposes. At workplaces where there is a Collective Bargaining Agreement or Employment Code, these matters are usually agreed upon.

DISCRIMINATION

It is unlawful for an employer to discriminate against you because of your race, your sex or because you are married. For details on discrimination on the grounds of sex or martial status see Section Number 21 on the Equal Rights Act and “The Law and You II”, pg. 15 on the Prevention of Discrimination Act.

HEALTH AND SAFETY

Employers have a duty to take reasonable care of their workers by providing;

- a safe place of work;
- a safe system of work;
- adequate plant and equipment with guards as required and competent staff.
- training and ensure that workers understand and know safety procedures, and know of all hazards in the workplace.

The Occupational Safety and Health Act, 1997 (OSHA), provides
for registration and regulation of all industrial establishments, and occupational safety and health of persons in the workplaces. Hence, factories, shops, logging operators, banks, corporations, homes where domestics and other types of workers work, are all covered by OSHA. OSHA sets out clearly all obligations by an employer in providing a safe place and system of work.

If you have an accident at work, however small, report it to whoever keeps the accident book or to the personnel officer. You may also file a complaint with the Ministry of Labour. You cannot be dismissed for doing so. This protects you later if you find you were injured more seriously than you thought.

Your employer also has a duty to report it to the Ministry of Labour which enforces OSHA and to provide information when treatment is required in the event of an accident.

If you are injured at work or become ill as a results of inadequate safety precautions, you can sue your employer for damages. You will need legal help with this.

In order to get some compensation or damages for injury, ill-health or the death of a close relative at work, you or the person acting for you will have to prove to the court:

- that the employer breached her/his duty to the worker by failing to take reasonable care; and
- that the injury occurred as a result of this breach of duty and of provisions of OSHA.

It can take several years for this kind of action to be finalised. Most cases are settled without a court hearing actually taking place. Your lawyer will advise you how much the other side has offered and whether you should accept the offer.

If you were partly responsible for the accident, you can still win a claim against the employer, but the damages will be reduced depending on how much the judge thinks you were to blame. This is called contributory negligence.

(See the law and You II’ pg. 66 on OSHA)
NIS Benefits
If you are off work because of an accident at work, or because of an industrial disease, you can claim social security benefit. There are three different benefits:

(1) **sickness benefit** is paid if you cannot work for a reason other than employment injury, for periods of illness lasting four days or more up to a maximum of 26 weeks;

(2) **industrial injury benefit** is paid if you cannot work because of an injury received in an accident at work, for the same period as sickness benefit;

(3) **industrial disablement benefit** is paid after industrial injury benefit stops. It goes on as long as you are disabled because of accident or disease. You can get industrial disablement benefit even if you are working. The amount you get depends upon the extent of your disablement, which is decided by a medical board.

In assessing damages for an accident at work no account is taken of benefits received.

**DISMISSAL**
***What is a “dismissal”***?
A dismissal can take the following forms:

1. You are sacked by your employer with or without notice for good and sufficient cause.

2. You hand in your notice because your employer has broken your contract of employment (for instance by transferring you to a lower grade). This is called “constructive dismissal”. But you have to prove that your employer broke the contract and that you are entitled to quit. This can be very hard to prove.

**Termination of Services may occur as follows:-**
1. Employer or employee gives notice to the other.
2. You are made redundant due to modernisation, automation, closure, re-organisation or sale of your employer’s business.
**Dismissal with notice**
Your employer can dismiss you for any reason by giving you notice of the agreed length, or if none has been agreed, reasonable notice.

What is reasonable depends upon the kind of work you are employed to do, whether you are a senior or a junior employee and so on.

In the absence of agreement manual workers are entitled to two weeks’ notice.

If your employer does not what you to work out your notice she/he must give you pay instead of notice.

**Dismissal without notice**
Your employer can sack you without notice or pay instead of notice for:

- incompetence;
- breach of faith;
- misconduct;
- disobedience; or
- negligence;

**Wrongful dismissal**
If your employer sacks you without notice without sufficient reason for doing so you can sue her/him for damages for wrongful dismissal. The amount of damages you will get will be the amount you would have been paid for the period of notice you should have been given.

**N.B. You cannot be dismissed or disciplined on the basis of, among other things, race, colour, religion, social origin, marital status and political opinion.**

**PENSIONS**
If you have paid enough NIS contributions you will be entitled to an old age pension when you reach 65.

The amount of your pension will depend on how much you used to
earn and how many NIS contributions you made, but you cannot get more than 60% of what you used to earn.

You may also be covered by an employer’s pension scheme. This should provide for:
- payment of your own pension;
- a pension for your widower or widow;
- other benefits, for example for children and dependant relatives
- some pension schemes require that a specific beneficiary or beneficiaries be named.

Your pension is a part of your pay packet. A pension scheme should be negotiated by your union in the same way as your pay is. See:

Buying And Selling Land

Advice To Buyers

Before you agree to buy any immovable property (i.e. land with or without a house and/or other buildings on it) you should:

1. **Get the property valued by an independent valuer**, so that you know whether the property is worth what the seller is asking for it.

2. **Ask to see the document of title to the property** (the transport if the land is unregistered; the certificate of title if the land is registered’ or the lease if that’s what you’re buying) so that you can make sure that:
   (a) the property is owned by the seller (or the person who has authorised the seller to sell for her/him under a duly registered power of attorney. See Section Number 15 on Powers of Attorney);
   (b) the property described is the property you want to buy (you may need to look at the plan mentioned in the description of the property);
   (c) you will be buying full ownership of the property and not just a share in it (unless that’s what you want); and
   (d) the property is not subject to any mortgage or other charge or lease that you have not been told about.

3. **Inspect the property** so that:
   (a) You can see for yourself what you will be buying; and
   (b) You can see whether anything the seller has told you about it is true, for example that no one is living in it.
The Agreement Of Sale

An agreement of sale should be in writing and should contain the following terms:

**Parties** – The names and addresses of the seller and buyer.

**Property** – The description of the property taken from the transport, certificate of title or lease.

**Price** – It is usual for the buyer to pay 10% of the price as a deposit on the signing of the agreement and the balance on completion (i.e. the passing of transport, title or lease). It is not advisable to pay all of the purchase price before completion, but you may agree to pay more than 10% if you are getting early possession.

**Possession** – When the buyer will get possession (usually on completion) and whether it will be vacant possession (vacant possession means that the property is free from tenants or other occupants).

**Expenses** – It is usual for the seller and buyer to share the expenses equally. The expenses comprise registrar’s fees, duty, lawyers’ fees and swearing fees. Apart from the last item and the lawyer’s fees for preparing the agreement of sale, the amount to be paid is based upon the value of the property accepted by the Registrar of Deeds. (An affidavit of valuation of the property may have to be filed to ensure that duty is paid on the full market value of the property.) The higher the value, the greater the expense. A buyer and/or seller can ask to be shown how the amount she/he is asked to pay has been calculated.

**Rates and Taxes** – These are usually paid by the seller up to the date of completion.

**Rents** – If the property is rented rents are usually received by the seller up to the date of completion.

**Performance** – It is usual for time to be of the essence of the agreement so that if one of the parties fails to keep her/his end of the bargain within the time fixed the other can straightaway treat the agreement as at an end and take legal action.

**Completion** – A time limit (usually 3 or 4 months) is fixed for the completion of the purchase.
It is advisable to have a lawyer prepare the agreement of sale. One lawyer can act for both parties (but should not act for either if a dispute arises) or they can go to different lawyers.

**If the agreement of sale is not in writing** one party will not be able to enforce it against the other unless either there is some written evidence of it signed by the person to be sued (e.g. letters), or there has been part performance of the agreement by the party suing. Legal advice will be needed on this.

**After The Agreement Has Been Signed**

The necessary documents are prepared by the lawyer(s) and filed at the Deeds Registry. The Registrar’s fees and duty are paid at the time of filing.

**If the land is under the transport system** the sale must be advertised in the Official Gazette. If no one opposes the sale within 13 days after advertisement the transport or lease can be passed in the Transport Court (a special court of the High Court which is usually presided over by the Registrar of Deeds). Both parties or their attorneys will have to attend Transport Court to sign the transport or lease. The new document of title can be collected from the Deeds Registry about 3 weeks later.

**If the land is registered** land under the Land Registration System there is no advertisement. The Transfer is merely registered at the Land Registry and the new document called a Certificate of Title may be collected about 3 weeks later.

**Compliance certificates** must be obtained by the seller or lessor and lodged at the Deeds Registry or Land Registry before the transport or lease can be passed or the Transfer registered. These are (1) from the local authority confirming that rates and taxes have been paid and (2) from the Internal Revenue Department confirming that the seller does not owe any taxes.

**If The Buyer Or Seller Won’t Complete The Agreement**

If the buyer won’t go through with the purchase the seller can forfeit the deposit and sue for damages for breach of contract if she/he will still be out of pocket (if, for example, she/he can’t sell the property for as good a price as the buyer agreed to pay).
If the seller won’t go through with the sale the buyer can sue for specific performance of the agreement. This is a judgment ordering the seller to pass title and authorizing the Registrar of Deeds to do so if necessary.

Mortgages

Many people cannot afford to buy land with all their own money and so get a loan for all or part of the price with the land as security for payment. In other words they mortgage the property. The mortgage may be given by the seller but it is usually given by a company in the business of lending money on mortgages.

The procedures for passing transport or a mortgage are very similar to the procedures for passing transport and title described above. If the mortgagor (“i.e. the buyer /debtor) falls behind with payment of the mortgage installments the mortgager (i.e. the creditor) can sue and get judgment for the full balance due, have the property sold at execution (i.e. by the court) and be paid out of the proceeds of sale. This is known as a foreclosure.
Landlord And Tenant

This Leaflet Applies to you if:

You are the tenant of a furnished or unfurnished dwelling house (i.e. a building or part of a building used for living in) UNLESS the rent includes payment for meals and personal services.

Am I A Tenant?
You are a tenant if you live in a property or part of a property owned by someone else of which you have exclusive possession for a set term in return for the regular payment of a sum of money called the rent.

Exclusive possession is the right to keep all others out of the set property, including your landlord.

A set term can be either a single period of time ending on a fixed set date, for example 5 years (a fixed lease), or a short but definite period of time in the first place (a week, a month, a year) which will continue for further periods of the same length until ended by notice to quit (a periodic tenancy).

If you do not have exclusive possession for a set term in return for paying rent you are not a tenant but a licensee.

The most important difference between a tenancy and a licence is that the law does not give licensee the same protection it gives to tenants. For example, it is much easier for a landlord to recover possession of her/his property from a licensee than a tenant.

Note: Even if your landlord says you are a licensee you may in fact be a tenant. If you are in any doubt whether you are a tenant or a licensee get legal advice.
Does My Agreement With The Landlord Have To Be In Writing?

A tenancy can be made orally (by word of mouth) or in writing. A lease is the same thing as a tenancy but the word “lease” is usually used to refer to a written agreement between a landlord and tenant for a fixed number of years.

If a lease is for more than 3 years it must be made by deed. A deed is a formal document, which must be signed before a notary public and registered in the Deeds Registry.

If your agreement with the landlord is in writing it will set out your rights and duties and those of the landlord in what are called covenants.

Note: Even if your agreement with the landlord can be created orally it is better for it to be in writing to avoid later argument.

Repairs

Whatever your agreement with the landlord says, the landlord is legally obliged to make sure that the property is in repair and in all respects reasonably fit to live in at the start of and during the tenancy.

(There is one exception to this rule, which is if your lease cannot come to an end for at least 3 years and the lease says that you must make the property reasonably fit to live in.)

The landlord or her/his agent can enter the property to inspect its condition but must first give you 24 hours notice in writing of her/his intention to do so.

If the landlord fails to keep the property in repair you can:

- send her/him a notice by registered post setting out the repairs that need doing and their estimated cost and requesting that they be done within 30 days of receipt of the notice; and
- if the landlord fails to do the repairs within 30 days, do them yourself and deduct the cost from the rent.

In addition if the health of you or someone living with you is affected, the landlord may be sued for damages.
Note: Although you have no duty to repair the property you must use the property in a “tenant-like” manner that is you must take proper care of it.

Security Of Tenure

Unless you leave the property of your own free will the landlord cannot get possession of the property from you unless:

- she/he ends the tenancy by giving you a notice to quit of the proper length if your tenancy is a periodic one. (A notice to quit is not needed if the tenancy was for a fixed period and has ended because the fixed period has come to an end). The landlord must give you at least 4 weeks notice to end at the end of a completed period of the tenancy. For example, if you have a monthly tenancy, the notice must come to the end of a calendar month; and

- gets a court order for possession against you

Getting a possession order

The court can only make a possession order on one or more of the following grounds:

1. If you have not paid the rent or have broken any other obligation to the landlord. The court can suspend the operation of the possession order on condition that you pay the rent or comply with the obligation.
2. If you or someone living with you has caused a nuisance or annoyance to neighbours or other tenants.
3. If you have been convicted of using the property for illegal or immoral purposes or have allowed the property to deteriorate (apart from fair wear and tear).
4. If you have given notice to quit (but later changed your mind) and as a result the landlord has agreed to sell or let the property. The landlord would have to show that your not leaving would cause her/him financial loss.
5. If the landlord requires the property as a home for or for use by herself/himself for work purposes.
6. If the landlord reasonably requires the property for use as a home by any member of her/his family or someone who works full time for her/him. The court must be satisfied that reasonable alternative accommodation is available to you. Other accommodation will be suitable if:

   (a) you will have the same or similar security of tenure; and
   (b) it is reasonably suitable to your means and needs as regards rent, size and nearness to your workplace.

7. If the property or part of it has been compulsorily acquired or is needed for public purposes.

8. If the property is legally required to be knocked down.

9. If the property is required for repairs, improvement or rebuilding. The court must be satisfied that greater hardship would be caused by refusing to grant the order. Among the matters the court must take into account in deciding this is whether or not other accommodation is available for you.

10. If your tenancy was conditional upon your being an employee of the landlord and your employment has ended.

11. If the property was let to you because you were employed by the landlord and you are no longer so employed or you have been offered alternative accommodation.

   **Further,** even if the landlord has one or more of the above grounds the court can only make an order if it thinks it reasonable to do so.

   The court can postpone the hearing of an application for possession and the coming into effect of a possession order. It can also order the landlord to pay compensation to a tenant who will suffer loss or damage as a result of an order being made.

   A tenant can **appeal** against a possession order to the Full Court of the High Court and from there to the Court of Appeal (see Section Number 20 on Going to Court).

   **If the landlord sells the property** this will not affect your rights as a tenant. The new owner will become your landlord and will have the same obligations to you as the previous owner.
Protection from harassment and the threat of eviction

The law protects you in case the landlord tries to take a short cut to possession by harassing you into leaving or evicting you without a court order or threatening to do so.

1. If the landlord or anyone on her/his behalf harasses you by doing anything to interfere with your peaceful enjoyment of the property you can sue her/him for an order to stop the harassment and damages. Examples of harassment are threats and abuse; frequently cutting off water or electricity; changing the locks.

2. If the landlord removes the roof, windows, door or any other part of the property without your consent and otherwise than in the process of doing repairs she/he will be guilty of a criminal offence.

3. If your landlord throws you out of the property without a possession order or tries to do so she/he will be guilty of a criminal offence and you can sue her/him for an order to let you back into the property or to stop trying to evict you and for damages.

If I Die What Happens To People Living With Me?

If you die the tenancy will automatically pass (in the following order) to:

- your widow/widower is she/he is living with you in the property when you die, or
- your reputed wife/husband if she/he has been living with you in the property for at least 6 months when you die, or
- a member of your family or household who is living with you when you die (if there is a dispute as to who should become the tenant a magistrate can be asked to decide), or
- a dependant who has been living with you for at least 6 months when you die.

Rent

The amount of rent you pay, should be assessed (fixed) by a magistrate. If the landlord has not had the rent assessed you can apply for assessment.
**Note:** At the time of writing it is not possible to get a rent assessed, as there is no magistrate carrying out rent assessments.

You must be given a **receipt** for every rent paid. If the landlord refuses to accept a payment of rent, buy a money order to the value of the rent and send it to the landlord by registered post.

**Do I have to pay increases in rent?**

No. Whether or not your rent has been assessed the landlord cannot increase it except for your proportion of any increases in rates and taxes payable on the property by the landlord. Otherwise, an increase may only be imposed with the approval of a rent assessment magistrate.

If the landlord has demanded an increase in rent and you have paid it you can recover the increase paid during the last 12 months. This is so even if you agreed to the increase. You can get your money back by deducting it from the rent.

**Premiums**

It is illegal for a landlord to ask for any money in addition to the rent as a condition of renting property to you. If you do pay anything extra (called a premium) you can get it back from the landlord.

**Can I Sub-let?**

You cannot sub-let all or part of the property without the written consent of the landlord. But if the landlord unreasonably refuses to allow you to sub-let you can apply to the Magistrates’ Court for permission to do so.

If you sub-let you will be the sub-tenant’s landlord and she/he will have the same rights against you as you have against your landlord.
Going To Court

What Court?
There are several courts in Guyana.

THE COURT OF APPEAL

THE FULL COURT

THE HIGH COURT

MAGISTRATES’ COURTS

LAND COURT

The magistrates’ courts are the largest in number. Small criminal and civil matters are heard in them, e.g. cases of minor assault, petty theft, abusive language, landlord and tenant claims and claims for debts under $50,000.00. There are magistrates’ courts in every county and most of the cases brought by the police and individuals are heard in them. A person may, however, bring a private criminal action in the Magistrates’ Court. N.B. The Director of Public Prosecutions (DPP), has at all times the discretion to withdraw this private matter.

This court also conducts preliminary inquiries/committal proceedings into the merits of charges for indictable offences such as rape, manslaughter, murder and treason. The Magistrate, after hearing and assessing the evidence led before him, may the commit the accused to stand trial in the High Court. If insufficient evidence was found to have been led, then the accused would be discharged. Note: This discharge is not an acquittal. Charges may again be brought against a person for the same alleged offence.

Above the magistrates’ courts is the High Court, where serious
criminal cases such as murder and rape are heard, as well as civil claims for amounts over $50,000.00, cases involving trespass to land and claims for damages for injuries as a result of traffic accidents. The High Court also deals with custody and adoption of children, divorce, injunctions, applications for probate and letters of administration and the passing of transports to land and mortgages.

There is one High Court but cases are heard in each country, at the High Court buildings in Georgetown, New Amsterdam and Suddie.

Appeals from the magistrates’ court and from a High Court judge’s decision in chambers are heard by the Full Court of the High Court.

The final court is the Court of Appeal where both criminal and civil appeals from the High Court and some from the Full Court and magistrates’ courts are heard. The Court of Appeal building is in Kingston, Georgetown.

The Land Court is a court established by statute to adjudicate on matters involving lands, including prescriptive rights.

Who Presides Over The Courts?

A magistrate, who is normally an attorney-at-law, presides over each magistrate’s court. Some deal exclusively with certain kinds of case, e.g. claims for possession by landlords and fraud.

A magistrate is addressed as “Your Worship”.

A Judge presides over sittings of the High Court. There is provision for twelve judges of the High Court and overall responsibility lies with the Chief Justice.

Sittings of the Full Court are presided over by not less than two judges.

The Chancellor, who is the head of all the judges, and four or five other Justices of Appeal comprise the Court of Appeal. Three or five members of the court hear appeals.

The Land Court is presided over by a Commissioner of Title.

Judges of the High Court, the Full Court and the Court of Appeal and the Land Court are addressed as “Your Honour”.

How Do I Begin Legal Proceedings?
This depends on whether it is a civil or criminal matter and if it is civil, the kind of claim you want to make.

If you want to sue someone for a sum of money below $50,000.00 or for property worth less than $50,000.00, you should file a claim called a plaint in the magistrates’ office. A copy of it with a date fixed for hearing before a magistrate will then be served by a bailiff on the person you have sued.

If you wish to bring a private criminal case, perhaps for insulting or abusive language, you must file a complaint in the magistrates’ office and a copy of it will be served upon the person you wish to summon.

If you want to claim a sum of money over $50,000.00 or damages for slander, trespass or injuries received in a car accident you must file a writ of summons in the Registry of the Supreme Court. It is then served by a marshal on the person you are claiming against.

All criminal proceedings in the High Court are brought by the Director of Public Prosecutions.

Do I Have To Have A Lawyer?
No, but it is advisable to have an attorney-at-law represent you, particularly in the High Court, where rules of evidence and procedure have to be followed strictly.

See Section Number 31 on Lawyers.

How Should I Dress For Court?
As usual, as long as this does not mean, for example, unbuttoned shirts or very low cut dresses. Men are not allowed to wear hats.

For women, well-tailored long pants (not tight) are permitted, or pants suits. It is advisable to avoid wearing bright colours such as red, orange, pink, to court.

What Does A Courtroom Look Like?
Here is a diagram of a typical courtroom of the High Court.
If you are a witness in court, you must be prepared to speak clearly and loudly, and to tell the truth as well as you recall.
The Law and You  Section 21 - The Equal Rights Act

The Equal Rights Act

Sexual Discrimination is Illegal

The Equal Rights Act makes it illegal to discriminate against anyone on the ground of her/his sex or marital status.

What “Discrimination” means

The meaning of “discrimination” is not given in the Act, but the courts should give it the following meanings:

1. Treating you less favourably than someone else would be treated, because of your sex or because you are married (this is called direct discrimination).
2. Applying a test or condition, which is applied to everyone, but which puts one sex or married people at a disadvantage (this is called indirect discrimination). For instance, requiring job applicants to be 5’10” or taller would be indirect discrimination against women.
3. Treating someone less favourably because she/he has taken action, or helped someone else to take action, under the Act.

If you think you have been discriminated against because of your sex or because you are married you can:

(1) make a report to the police so that they will prosecute the person (“person includes a company or state corporation) who has discriminated against you;
(2) bring a private criminal action if the police fail to prosecute; and
(3) bring a civil claim in the High Court for damages and other
remedies, such as an injunction ordering the person who has discriminated against you not to discriminate against you in future.

**Sexual Discrimination In Employment**

It is illegal for an employer to discriminate against you because of your sex or because you are married in any of the following respects:

- arrangements for recruitment;
- refusing to consider you for a job or to appoint you;
- the terms on which you are offered a job;
- refusing to offer you promotion, transfer you to a better job or arrange for you to be trained;
- the fringe benefits offered by the employer (e.g. help with housing; time off);
- putting you on short time work, laying you off, dismissing you or making you redundant.

However, it is perfectly legal for an employer to make special provision for women, for example by giving paid maternity leave or running a day care centre so that mothers can work.

**If you think you have been discriminated against by an employer you can:**

1. make a report to the police so that the employer can be prosecuted;
2. bring a private criminal action if the police fail to prosecute; and
3. bring a civil claim in the High Court for damages and other remedies.

**Equal Pay**

The Act states that women and men doing the same or similar work must receive equal pay.

If you think you are not being paid as much as someone of the opposite sex doing the same or similar work you can do any or all of
(1), (2) and (3) above.

**Body Searches**

The Act states that a woman can only be searched by another woman and that a man can only be searched by another man.

If in any circumstances you are asked to submit to a search you can refuse unless the search is to be done by a member of your own sex. If you are searched without your consent you can sue the person searching you and her/his employer for assault.

**The Penalties For Discrimination**

A person prosecuted and found guilty by a magistrate of discrimination under the Act can be fined $5,000.00 and imprisoned for six months. If the offence is a continuing one the accused can be fined an extra $500.00 for each day the offence continues.

As well as being prosecuted a discriminator can be sued in the High Court by her/his victim and ordered to stop discriminating and to pay damages.

**Your Rights Under The Equal Rights Act Cannot Be Taken Away By Any Other Law Or By Any Agreement.**

**Make The Act Work**

Full sexual equality will only become a reality if action is taken against those who discriminate.

If you think you are not being treated as well as you would be if you were of the opposite sex or not married at work, in a shop, at the bank, in a hotel, restaurant or bar, in fact anywhere by anyone Take Action.
The Family And Dependants Provision Act

The purpose of this Act is to prevent family members and dependants from being left without proper means of support when the person upon whom they were dependant dies.

Before the Act a person could leave her/his property by will as she/he chose. Family members and dependants could be left with nothing. If a person died in testate, which is without leaving a will, her/his property would go to the nearest relatives regardless if others would be left in need. This led to great hardship.

Under the Act family members and dependants can apply to the High Court for financial provision to be made for them out of the property left by the deceased, on the ground that what, if anything, they are to get under the will or the law relating to intestacy is not enough.

There is Very Little That Can Be Done To Avoid An Application Being Made Under The Act

Who Can Apply?
1. The wife or husband of the deceased. “Wife” includes a single (i.e. unmarried, widowed or divorced) woman living together with a single man for more than seven years before the date of death and “husband” includes a single man living together with a single woman for more than seven years before the date of death.
2. A child of the deceased, whether born in or out of wedlock or legally adopted.
3. Any person who was treated by the deceased as a child of the family in relation to any marriage of the deceased.
4. A Dependant, i.e. any person who was maintained wholly or partly by the deceased immediately before the date of death. This allows, for example, a woman who was living with and maintained by a man who was married to someone else or a married man living with and maintained by another woman to apply.

What Can The Court Do?
If the Court is satisfied that what, if anything, an applicant will get under the will or on intestacy is not enough it has very wide powers.

It can order that the applicant:
(a) receive periodical payments; and/or
(b) receive a lump sum payment; and/or
(c) be given property left by the deceased; and/or
(d) be given property bought with money left by the deceased.

If the applicant is the wife or husband of the deceased, the Court can award her/him what it considers reasonable whether for maintenance or not. In all other cases the applicant can only be awarded reasonable maintenance.

If the applicant is in urgent need the Court can make a temporary order for periodical payments while it decides what to do.

The Court has wide powers to make changes to or end orders for periodical payments.

How Does The Court Decide?
In deciding whether the applicant should get anything, and if so what, the Court has to look at:
(1) What the applicant has and what she/he needs;
(2) What the beneficiaries (i.e. people entitled under the will or on intestacy) have and need;
(3) How much property the deceased left;
(4) Any physical or mental handicap that the applicant or any beneficiary has;
(5) Any obligations the deceased had towards an applicant or any beneficiary;
(6) If the applicant is a child, the child’s educational and training needs; and
(7) If the applicant is the wife or husband:
   (a) her/his age and the length of the marriage;
   (b) the contribution made by the applicant to the welfare of the family of the deceased including that made by looking after the home and family; and
   (c) what the applicant might reasonably have expected to get if the marriage had ended when it did, but by divorce instead of death.

**When Must An Application Be Brought?**

An application should be brought within 1 (one) year of the grant of probate or letters of administration of the estate of the deceased but the Court can give permission to bring a late application.
The Married Persons Property Act

Before the Married Persons Property Act (MPPA) was amended in 1990 the High Court had no power to alter property rights in disputes between wife and husband.

This caused great hardship, e.g. if the matrimonial home was in the husband’s name alone the Court could not award the wife a share in it unless she had put money towards its purchase or improvement, although for many years she may have looked after the home, her husband and children.

NOW the high Court can make any order (including an order for sale) in relation to any property in dispute between husband and wife.

DOES THE ACT ONLY APPLY TO COUPLES WHO ARE LEGALLY MARRIED?

No, but if a couple are not legally married they must:
(a) have been living together, and
(b) both be single, i.e. widowed, divorced or not legally married to someone else.

WHAT CAN I GET?

If you make an application in respect of property owned by your wife/husband what you can get depends upon:
(a) how long you have lived together; and
(b) whether or not you have worked outside the home.
• If you lived together for less than 5 years the court has to take into account your contribution to the marriage and the welfare of the family, including any contribution made by looking after the home and caring for the family.

• If you lived together for more than 5 years and you did not work outside the home, the court must award one third of the property in dispute to you.

• If you lived together for more than 5 years and you worked outside the home the court must award one half of the property in dispute to you.

WHAT IF THE PROPERTY HAS BEEN SOLD?
The Court can order what shall be done with the proceeds of sale or make an order in respect of property bought with the proceeds of sale.

WHO OWNS SAVINGS FROM HOUSEKEEPING MONEY?
If your wife/husband gives you money to pay household expenses any money left over or property bought with money left over will belong to both of you in equal shares unless you have agreed otherwise.

WHAT GENERAL RULES APPLY TO OWNERSHIP OF PROPERTY DURING MARRIAGE?
1. You each continue to own property, which you had before the marriage.
2. If property is bought in both your names jointly, you will each own an undivided half of it. You can each sell your undivided half share without the consent of the other but it is usually difficult to find a buyer for an undivided interest in property. If one of you dies the other will automatically inherit the dead person’s share and become the owner of the whole property. Either of you can stop this happening by “severing the joint tenancy” i.e.
changing from joint ownership to ownership in equal shares (see 3 below).

3. If property is bought in both your names in equal shares you will each own an undivided half of it. You can each sell your undivided half share without the consent of the other but it is usually difficult to find a buyer for an undivided interest in property. If one of you dies the other will not automatically inherit the dead person’s share so you can each leave your share to someone else in your will.

4. If your husband buys property and puts it in your name it is presumed that he has given it to you.

5. If your wife buys property and puts it in your name it is presumed that she is still the real owner.

6. If property is bought in the name of your wife/husband but you put a lot of money toward buying it or improving it you have a right to a share in the property. The amount of your share will depend on the size of your contribution. If your wife/husband does not accept that you are entitled to a share in the property you can ask the Court to decide the matter.

7. If property is bought by and in the name of your wife/husband she/he can sell it without your consent. But you can bring a claim under the MPA. (And see above under “What if the property has been sold?”)

N.B.
(1) 4 & 5 only apply to legal marriages. The others apply whether or not the parties are legally married.

(2) The presumption at each of 4 & 5 can be negatived by evidence of a different intention, e.g. that the property was to be jointly owned.

(3) Remember that to be able to bring a claim under the MPPA (see 7) you have to be legally married or be single and have been living with a single wo/man.

(4) Both parties to a legal marriage have the right to live in the matrimonial home as long as the marriage lasts whether the home is owned by one or both of them.
Bail

What Is Bail?
Bail is money paid and/or property lodged as security to ensure that a person charged with a criminal offence appears at her/his trial. When bail is lodged the person is released from police custody.

When Is Bail Available?
Bail is granted at any time, both before and during trial.

Bail Is Not Available To Persons Charged With Murder, Treason Or Some Narcotics Offences.
When bail is available it may be granted at the police station (while investigations are being carried out), by a magistrate or by a judge of the High Court.

Station Bail
If a person has been arrested and taken to a police station and the officer in charge decides that the offence is not of a serious nature she/he can grant bail.
It may be a condition of bail that the person reports to the police station when required.
When bail is granted a record is made of it and a receipt given to the person paying bail. The bail money &/or property will be returned either when the police drop the matter or the person bailed is charged and appears in court.

Court Bail
A person charged with a criminal offence can be granted bail by a magistrate or judge with or without an application for it having been made.
An application for bail can be made by the attorney-at-law for the accused before she/he makes her/his first appearance in court.

Bail can be granted to the accused upon her/his own recognisance or bond. This means that no money or property has to be lodged but the accused must sign a recognisance or bond by which she/he promises to come back to court for trial.

If there is any doubt about whether the accused will come back to court she/he will be asked to provide one or two sureties. A surety is a person who signs a recognisance or bond stating that she/he will ensure that the accused attends court on the date set for trial. The surety lodges some security to the value of the amount fixed by the magistrate or judge. The security can be money or title to land.

A surety is also called a bailor.

If bail is refused by the magistrate a further application for it can be made to a judge of the High Court.

An application can also be made to a judge to reduce the amount of bail fixed by a magistrate. The amount of bail should not be so high that the accused will not be able to make it. This amounts to a refusal of bail.

Paying Bail

The bail is lodged by the bailor at the magistrates’ office or the Supreme Court Registry, as the case may be, and a receipt is issued. The receipt must be kept until the trial is ended and then presented to the office or Registry so that the bail can be recovered.

Renewal of Bail

Normally it is only at the end of a trial that bail can be recovered. But if a bailor wishes to withdraw her/his bail before the case is finished and there is someone else willing to become a bailor in her/ his place she/he can appear at court on any day and ask to withdraw. If a bailor wishes to exchange bail lodged for alternative security she/he can also do this.

Bail is security only for as long as a trial lasts. So, if there is a preliminary enquiry in the magistrates’ court and then a trial in the High Court, bail has to be renewed when the case goes to the High Court.
When bail is renewed the bailor will have to sign the recognisance again. When committing the accused to trial in the High Court the magistrate will state whether the same or a different amount of bail will apply.

**Forfeiture of Bail**

If an accused person fails to attend court for trial her/his bail is likely to be forfeited, i.e. the bailor will lose her/his money or property.

If no reasonable explanation for the accused’s absence is given to the court a warrant will be issued for her/his arrest and an order for forfeiture of bail made.

If and when arrested, the accused will be kept in custody until the trial is over.

**If You Are To Act As A Bailor** the accused is technically placed in your custody. If she/he does not attend court it is your responsibility to give an explanation to the court or risk the loss of your money or property.

If you think the person you have bailed will not turn up at court you can protect yourself by arresting her/him or asking the police to do so. Once the accused has been arrested you can ask to be released from your obligation.
Police Powers Of Search

Search Before Arrest
As a general rule, the police have no right to stop and search you if you have not been arrested unless they have reasonable grounds for suspecting that you are carrying prohibited drugs, stolen goods or firearms. (The fact that the police don’t find what they are looking for doesn’t mean they didn’t have reasonable grounds for searching.)

But if you refuse to allow the police to search you, you may be arrested and you are likely to be searched at the police station. The matter will then be decided by the court and you may be found guilty of obstructing a police officer in the execution of her/his duty.

What You Should Do If You Are Stopped By The Police
Before you agree to be searched:
* Ask if you are being arrested.
* Ask what the police are looking for and under what authority they intend to search you. If they do not give reasonable grounds for wanting to search you, you need not agree to being searched.
* You can use reasonable force to protect yourself against an illegal search. But it is usually better to make a complaint and/or bring an action later.
* When possible, make that anyone who is with you stays to watch you being searched. They may be needed as witnesses later.
* If you agree to be searched but want it done privately, ask to be searched at the police station. Try and take the witnesses with you. Remember that you are going voluntarily and can leave as
soon as you have been searched unless you are then arrested.

* If the police officer is in plain clothes ask to see her/his identification card. If she/he is in uniform take a note of the number. As soon as possible make a note of any conversation between you and the officer and sign and date it. It may be useful later if you are charged with an offence or want to make a complaint.

* You Can Only Be Searched By An Officer Of The Same Sex As Yourself.

Search After Arrest

If you have been arrested without a warrant (see Section Number 26 on Police Powers of Arrest), the police may search you and seize any weapons and anything that can be used as material evidence for the prosecution. But they cannot search your premises without your consent, unless they get a warrant for that purpose or have entered your house with your consent in the course of making the arrest.

Entry And Search Of Private Premises Without A Warrant

The police have no general power to enter or search your home or any other private premises without a warrant.

They have a right of entry only in order to stop a breach of the peace or prevent one which is likely to occur or to stop someone being seriously hurt.

In all other cases the police may not enter or search your premises without your consent. Once you withdraw your consent and ask them to leave, they must do so. If they refuse they will be trespassers and you may use as much force as is reasonably necessary to make them leave. Alternatively, you may decide not to use force but to take legal proceedings against the police.

Entry & Search With A Warrant

A search warrant entitles the police to enter and search your premises without your consent and to use reasonable force to do so. It can only be obtained from a magistrate or justice of peace on the strength of a statement sworn by a police officer that she/he has reasonable grounds for searching.

Warrants may be obtained to search for a wide range of things,
including illegal drugs (see Section Number 29), firearms and stolen goods (see Section Number 28).

Powers given under a warrant vary and may include the power to search people found on the premises or to seize goods even when they are not specified in the warrant. Powers of arrest are often contained in a warrant.

Most warrants expire after they have been used once, so the police cannot demand re-entry on the same warrant. But some warrants can be used more than once and authorises entry at any time.

What To Do If The Police Arrive With A Search Warrant
1. Ask to see the warrant and read it carefully (the police only have to show it to you once). It will tell you what the police can and cannot do. You have the right to read it and you need not let in the police until you have read it.
2. Check the address of the premises to be searched in the warrant. You can refuse entry if the premises are not properly identified. You can refuse entry to adjoining premises, for example a flat over a shop if only the shop is named in the warrant.
3. Ask to see the warrant card of the officer in charge. It will help you to check that the callers are genuine police officers, and help you to identify the police officer if you need to make a complaint about any illegality in the way the search is carried out.
4. If you are alone, try to contact a lawyer or someone else to come and witness the search. If the police refuse to let you make a phone call, do your best to see what the police take. If possible, someone should watch every area that is being searched.
5. Unless the warrant says that the police may search you or anyone else in the premises (and remember, you can only be searched by an officer of the same sex as you) you can refuse to be searched.
6. If the police come late at night ask them to return in the day. A search should take place between 5 a.m. and 8 p.m. unless the warrant allows it to be carried out outside these hours.
7. Ask for a receipt for anything the police take away with them.
Police Powers Of Arrest

Arrest is the formal procedure by which a person is taken into custody to answer a charge.

In some cases a person can only be arrested by a police officer with a warrant; in others she/he can be arrested without a warrant and not only by a police officer but by a private citizen.

Arrest With A Warrant

A warrant is a document signed by a magistrate or justice of the peace, which directs a police officer to arrest a person suspected of having committed an offence. A warrant cannot be issued to a private citizen.

In order to get a warrant a police officer must give the magistrate details of the case in a written and sworn statement. The magistrate will then decide whether to issue a warrant.

A warrant must include the name of the person to be arrested and a description of the offence in simple language. If the offence was created by a written law there should be a reference to the relevant provision in the law.

No claim for damages can be made against a police officer who arrests someone under a warrant that turns out not to have been properly issued.

If You Are Arrested With A Warrant

* Ask to see it. A police officer can arrest you without having the warrant with her/him, but must show it to you as soon as possible after the arrest.
* Check that your name is on the warrant.
   Even if you think that the warrant may not be valid do not resist arrest as this may lead to further charges.

**Arrest Without A Warrant**
You can be arrested without a warrant by a police officer if:
- the officer has seen you commit an offence;
- someone charges you with having committed an offence and gives an undertaking to prosecute the charge;
- the officer finds you disturbing the peace;
- she/he reasonably suspects you have committed or are about to commit an offence or breach of the peace; or
- she/he finds you lying or loitering about between 8 p.m. and 5 a.m. and you cannot give a good account of yourself.

Except for serious offences, a police officer should not arrest you if you give her/him your name and permanent address.

If you are arrested without a warrant you must be told in simple language and the reason for your arrest. If you are not told why you are being arrested you should ask. The police officer is duty bound to tell you unless you are caught re-handed so that an explanation is not needed or you make one impossible by resisting arrest. Even then, the officer must give the reason for the arrest as soon as possible.

Members of the public are under a duty to help a police officer in making an arrest if called upon to do so. Failure to help without reasonable excuse is an offence for which you can be fined $150 or imprisoned for 3 months.

**Citizen’s Arrest**
You can arrest anyone who commits a breach of the peace in your presence and anyone who you suspect has committed or is about to commit a serious offence. But you should think twice before doing so as you can be sued for damages if you arrest the wrong person or an offence has not in fact been committed.

**Going To The Station To Assist With Enquiries**
If a police officer asks you to go to the police station with her/him
to assist with enquiries, for questioning or any other purpose but does not say that she/he is arresting you, you do not have to go. If you refuse she/he may arrest you. If she/he tells you that she/he is arresting you it is better not to resist as this may involve further offences.

**If you are arrested wrongly** you may be able to sue the police for false imprisonment.

**When Making An Arrest A Police Officer Should:**
1. Identify her/himself by giving her/his name, number and the station at which she/he is based.
2. Take you directly to the nearest police station.
3. Only use such force as is reasonably necessary. Force will not be justified if you do not resist arrest. Handcuffing is only justified if it is reasonably necessary to stop you escaping or to prevent violence.

**After You Have Been Arrested**
1. If you have been arrested it is advisable to see a lawyer. You have the right to legal advice in private. If you do not know a lawyer, ask your relatives or friends to find one.
2. Generally speaking, you have the right to make at least one telephone call.
3. It is better not to answer any questions or sign any documents until you have spoken with your lawyer. See Section Number 27 on Police Powers of Questioning.
4. If you are beaten or otherwise injured demand to be taken to a doctor for treatment. Make sure that you get a medical certificate.
5. You can refuse to let the police take your fingerprints. If you do refuse, the police may then apply to a magistrate to make an order that your fingerprints be taken without your consent. If your fingerprints are taken with a court order and you are later acquitted, the fingerprints and all copies and records must be destroyed. The same basically applies to taking your photograph.
6. The police should either charge or release you (with or without station bail) within 72 hours of arrest (see Article 139(4) of the
Constitution of the Co-operative Republic of Guyana). You can ask for bail and the police should grant it if they are satisfied that (a) you will return to the station when requested and (b) your release will not hamper their enquiries. See Section Number 24 on Bail.

7. If you are held for an unreasonable long time without being charged and taken before a magistrate or (b) placed on bail, you can take legal action to be released.
The Law and You

In many cases you will want to help the police when they ask you questions as they need public co-operation to do their job properly. But it is important that you know when you are not legally obligated to co-operate.

The Right To Silence

In general you do not have to answer police questions, whether they are informal or part of an official enquiry. But:

- failing to answer certain questions related to motoring offences is an offence;
- you must answer police questions about illegal drugs; and
- refusing to answer questions, particularly when the police have the power to stop and search you (See Section Number 25 on Police Powers of Search), may cause the police to become suspicious and to arrest you, even though the suspicion in unfounded.

Rather than remaining completely silent it might be better to say something like “I do not want to say anything until I have seen my lawyer”. Although you may feel that it would be quicker and easier to clear a matter up by answering police questions it is better not to do so until you have had legal advice. But if legal help is not readily available to you and you are in a position to make a statement that will prove your innocence, it may be better to do so or to otherwise co-operate with the police.
**Rules Governing Police Questioning**

When the police question you, their conduct is governed by a set of rules called the Judges’ Rules. These are not legally binding. Even where they are not obeyed a magistrate or judge can allow your statement to be used as evidence once she/he believes it was made voluntarily. This gives the police little incentive to follow the rules. The main provisions are as follows:

1. A police officer can question you, whether or not you are suspected of an offence, if she/he thinks she/he can get useful information from you. She/he can do this without arresting you, provided that you have not been charged with an offence or informed that you may be prosecuted for it.

2. First caution. As soon as the officer has reasonable grounds for suspecting that you have committed the offence she/he must caution you as follows: “You are not obliged to say anything unless you wish to do so but what you say may be put in writing and used as evidence”.

3. Second caution. Another caution should be given when you are charged or told that you may be prosecuted for an offence. You should be asked if you wish to say anything and told that you need say nothing, but whatever you do say may be taken down in writing and used as evidence. As a general rule, no questions should be put at this stage unless their purpose is to prevent harm being done to other people or to make clear the meaning of answers or statements already made. If such questions are to be asked you should be given a third caution.

4. Statements
   (a) If you are questioned or decide to make a statement after being cautioned, a record should be kept of the time and place of the questioning, who was present; and of what refreshments were given. Alcohol must never be given.
   (b) Questions and answers should be recorded in full. The record should be signed by you, or if you refuse, by the officer questioning you. Answers can be used as evidence whether or not you sign the record – there is no such thing as an off-the-record statement.
   (c) Any statement you make after being cautioned should be
written on the proper form. Police officers should only use their notebooks when there are no forms available.

(d) If you make a written statement you must do so without prompting and in your own words, or you can dictate it to a police officer and will then be asked to sign it. If you refuse the officer must do so.

(e) If an officer writes down your statement she/he should write down your words and not translate them into “police talk”.

(f) You must not be led to believe that any statement you make can only be used against you: if you are innocent this may prevent you from making a statement which might help clear you of the charge.

5. You should be told what rights and facilities are available to you. Notices saying what these are should be clearly displayed in the police station and drawn to your attention.

6. Reasonable arrangements should be made for your comfort and refreshment. Whenever possible you and the officer questioning you should be seated.

7. **Questioning of children.** As far as possible, children under 17, whether they are suspected of a crime or are merely being questioned as witnesses, should only be interviewed in the presence of a parent or guardian, or if these are not available, in the presence of someone who is not a police officer and who is of the same sex as the child. A child should not be arrested or questioned at school if this can be possible avoided: if it is essential to do so, it should be done only in the presence of the headteacher, or her/his nominee, with her/his consent.

**Voluntariness**

Any statements made by you should not be used in evidence unless the court is convinced that they were made voluntarily. The prosecution must prove that this is so.

**If inducements** (e.g. “We can make it easier for you if you confess”) or **threats** (e.g. “We won’t give you bail until you make a statement”) are made to you while you are being questioned, your statement will **not considered voluntary.**
**But remember** that even if the Judges’ Rules were not followed a magistrate or judge can still decide that your statement was made voluntarily.

**Some Advice**

1. Never rely on a police suggestion that a confession will make things easier for you.
2. Try to ignore all threats and inducements to make a statement if you don’t want to, to make a confession if you are innocent or to sign a statement that you have not given.
3. If the police question you at your workplace, you should get in touch with the local representative of your trade union or professional organisation at once. If the offence has nothing to do with your place of work, you should refuse to discuss it in the presence of your employer. Even if the offence is concerned with your place of work, remember that you do not have to say anything.
Theft

What is Theft?
Theft is the dishonest taking of property belonging to another person with the intention of depriving the owner permanently of it.

For the offence to be committed all the parts of the definition must be present. E.g. (1) If you take and carry away property belonging to another person in the mistaken belief that it is yours, there is no theft as your taking was not dishonest. (2) If you take and carry away property belonging to another person with the intention of using it for a particular purpose and then return it, there is no theft as your intention was not to deprive the owner permanently of it.

Another word for theft is Larceny. Theft of growing things from land, e.g. fruits and vegetables is called praedial larceny.

What Can Be Stolen?
Any kind of property can be stolen, e.g. money; all movable property; documents of title to land; trees, fruits and vegetables; domestic animals; gold, precious stones and valuable minerals.

Who Can Be Guilty Of Theft?
Anyone over 10 years of age who has enough intelligence to form an intention to steal.

Larceny By Finding
If you find something and believe the owner can reasonably be found but you kept it for yourself, you will be guilty of theft. Otherwise you can keep what you find.
Larceny By A Bailee

If property owned by someone else is placed in your temporary custody for a particular purpose (e.g. cleaning or repairs) you will be the bailee of the property. If you dishonestly sell the property, keep it for yourself or give it to anyone else other than the owner you will be guilty of theft.

Punishment For Theft

The punishments for theft vary according to the nature of the offence and whether the offender has any previous convictions. For the offences mentioned above you can be imprisoned for 3 years on first conviction and up to 10 years on second conviction.

For some kinds of theft you can be imprisoned for much longer on first conviction. You can be imprisoned for 14 years for:

- stealing from your employers
- stealing from a ship or boat etc., or dock or wharf etc.
- stealing in a dwelling house
- stealing from the person
- stealing property worth more than $75 from premises of which you are the tenant.

Embezzlement

If you receive property on behalf of your employers or partners and instead of handing it over to them you keep it for yourself, you will be guilty of embezzlement and can be imprisoned for 14 years.

False Pretence

If you obtain money or other property for yourself or someone else by any false pretence (e.g. that you can get a U.S. visa for the person from whom you obtain money) you will be guilty of false pretence and can be imprisoned for 3 years.

Fraudulent Conversion

If you keep for yourself property which is entrusted to you for safekeeping or for delivery to someone else, or which is received by you on someone else’s behalf you will be guilty of fraudulent conversion and can be imprisoned for 7 years.
Falsifying Accounts
If you falsify the accounts of your employers with the intention of defrauding them you can be imprisoned for 7 years.

Blackmail
If, with the intention of gaining money or other property from someone, you accuse or threaten to accuse her/him of a specified offence (e.g. a sexual offence or an offence punishable by more than 7 years imprisonment) you will be guilty of extortion and can be imprisoned for life. It makes no difference whether the person blackmailed committed the offence or not.

Robbery
Robbery is the stealing of property from a person by using or threatening to use force.
If you rob someone you can be imprisoned for 14 years, unless:
(1) immediately before, during or after the robbery you hit or use any other personal violence to anyone; or
(2) with one or more persons you rob or assault with intent to rob someone; or
(3) while armed with a dangerous or offensive weapon you rob or assault with intent to rob someone; in which case you can be imprisoned for life and whipped or flogged (if you are a man). If you assault someone with intent to rob her/him you can be imprisoned for 3 years.

Burglary
Burglary is the breaking and entering of a dwelling house at night (between 7 p.m. and 5.30 a.m.) with intent to commit a serious crime. If you are found guilty of burglary you can be imprisoned for life.
“Breaking” includes getting in by trick or forcing a means of getting in or out. There does not need to be any actual breaking.
“Entering” includes putting any part of your body or anything held in your hand inside the building.
If you commit a break and enter offence which does not amount to burglary, e.g. because the breaking and entering was not at night,
you can be imprisoned for 7 years or more, depending on the kind of building you break and enter and whether or not you actually commit a serious crime while inside.

If you enter without breaking into (e.g. if the door is open) a dwelling house at night with intent to commit a serious crime you can be imprisoned for 7 years.

If you are found anywhere at night with a dangerous or offensive weapon or housebreaking tools you can be imprisoned for 3 years on first conviction and for 10 years on second conviction.

**Receiving Stolen Goods**

If you receive any property which you know or ought to know has been stolen you can be imprisoned for 14 years.

If you are found in possession of property which has recently been stolen without a proper explanation, you may be found guilty of receiving.

**Police Powers**

You can be stopped and searched by any police officer who has reasonable grounds for suspecting that you are carrying stolen goods.

The police can obtain a warrant to search your home or other property if there are reasonable grounds for suspecting that stolen goods may be found there. See Section Number 25 on Police Powers of Search.
Drugs & The Law

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) ACT (THE ACT) PROVIDES HEAVY PENALTIES FOR A LARGE NUMBER OF OFFENCES CONNECTED WITH THE POSSESSION OF, TRAFFICKING IN AND GROWING OF NARCOTIC DRUGS (NARCOTICS). THERE ARE MANY KINDS OF NARCOTICS, INCLUDING OPIUM, HEROIN, COCAINE AND CANNABIS.

Police Powers
* You can be arrested without a warrant by any police officer who reasonably suspect that you have committed, attempted to commit or are about to commit any offence under the Act.
* You can be stopped and searched by any police officer who reasonably suspects you of being in possession of a narcotic.
* Your car or other means of transport and any person in it can be stopped and searched by any police officer who reasonably suspects that it is being used to commit any offence under the Act.
* The police can obtain a warrant to search your home or other property and everyone in it or who has just left if they reasonably suspect that evidence of dealings in narcotics can be found there. The search can be carried out by the police officer named in the warrant with such help as she/he thinks reasonable at any-time or times within a month from the date of the warrant.
**Reasonable force can be used.**

* The police can seize any narcotics and any property (e.g. your car) which is thought to be evidence of an offence under the Act.
* Evidence can be admitted in court even if it was obtained during an illegal search or by a trick.
* Any police officer can by her/himself or with such help as in her/his opinion is reasonable, enter and inspect land without a warrant if she/he reasonably believes that it was or is being or is about to be used to grow cannabis, coca plant or any other prohibited plant.
* A warrant can be obtained to search for any property which can be forfeited (see below).

**N.B. You can only be searched by a person of same sex as yourself.**

**Offences** - (Maximum penalties on conviction in the High Court are given).

1. If you use opium, cannabis, heroin or cocaine or are found in possession of any utensil connected with the use of these narcotics or are found without reasonable excuse in any place where persons are known to use the narcotics or allow property which you own, occupy or manage to be used in connection with the use or trafficking in narcotics you can be fined $10,000 and imprisoned for 10 years.

2. (a) If you are found in possession of narcotics you can be fined not less than $10,000 or 3 times the value of the drug, whichever is greater, and imprisoned for 10 years. (b) If you are found in possession in or near a school or anywhere else where under 18 year olds are likely to be you can be fined not less than $25,000 or 3 times the value of the drug, whichever is greater, and imprisoned for life.

3. If you traffic in narcotics (i.e. import, export, make, sell, supply, administer or deliver narcotics without a licence) you can be fined not less that $25,000 or 3 times the value of the drug, whichever is greater, and imprisoned for life. If you are found in possession of more than the small amounts of narcotics specified in the Act it will be up to you to prove that your possession
was not for the purpose of trafficking.

4. If you are found responsible for the death of an under 18 year old as a result of her/his use of a narcotic you can be sentenced to death. If you are found to be one of several persons who has been responsible for an under 18 year old using narcotics within 3 months of her/his death you can be sentenced to death.

5. If you take a narcotic into or out of prison you can be fined not less that $10,000 or 3 times the value of the drug, whichever is greater, and imprisoned for 10 years. And your land or your right to occupy it and all machinery, equipment and other things used in connection with the cultivation will be forfeited to the State. If you find out that a prohibited plant is being or is about to be grown on property over which you have any rights and do not promptly inform the police it will be up to you to prove that you did not agree to what was going on.

6. If you handle anything containing a narcotic you can be fined $5,000 and imprisoned for 3 years, unless the handling was in connection with trafficking, in which case you can be fined not less than $25,000 or 3 times the value of the drug, whichever is greater, and imprisoned for life.

7. If you send any narcotic by post you can be fined $25,000 and imprisoned for 3 years.

8. If you bring into or send to Guyana any narcotic you can be fined not less than $10,000 or 3 times the value of the drug, whichever is greater, and imprisoned for 10 years.

9. If you obstruct any police officer in the execution of her/his duties or in any other way attempt to defeat the course of justice under the Act you can be fined not less than $7,000 and imprisoned for 5 years.

10. If you fail to give any information or document required for the purposes of the Act or give false information you can be fined not less than $5,000 and imprisoned for 3 years.

N.B.

*Upon conviction in the High Court of any of the offences listed at 1, 5, 6, 8 and 9 above, if you have already been convicted of one of them you can be imprisoned for life.

*Any property you have allowed to be used in connection with an
offence under the Act can be forfeited.

* Upon conviction of any of the offences listed at 2 (b), 3, 4, 5, & 6 above ALL your property can be forfeited to the State. (The rights of people who have genuine claims over your property are protected.) Once you are suspected of having committed one of these offences an order can be obtained preventing you from selling or dealing with your property and/or putting the Official Receiver in charge of it. If your conviction is set aside on appeal you can apply for any property forfeited to be returned to you.

* Unless you are arrested for offence 1 or 2 above bail will not be granted except in special circumstances. But you should be tried within a reasonable time and if you aren’t this may amount to a special reason for granting you bail.

* If you are convicted of an offence under the Act the court can only substitute another punishment for a death sentence or imprisonment or sentence you to less than the minimum term of imprisonment set out in the Act if there are special reasons. If you are under 18 at the time of the offence this could be a special reason. Other punishments include release upon recognisance, probation or being sent to a training school.

* The Act contains provision for rehabilitation of drug addicts but at the time of writing this leaflet no rehabilitation centers have been established.
Traffic Offences

Introduction

If you own and/or drive a motor vehicle (e.g. car; motor cycle; minibus; tractor) on a public road there are many rules and regulations that you must comply with or be guilty of an offence. These include those relating to:

1. the vehicle itself – its size, weight, marking etc.;
2. the licences and certificates which must be obtained; and
3. the way in which the vehicle is used on the road.

This Section concentrates mainly on (2) & (3) and looks at some special rules relating to hire cars and minibuses.

Licenses & Certificates

If you own or drive a motor vehicle on a public road you must make sure that it is:

1. Registered. You must be 17 to be the registered owner of a motor vehicle. When a vehicle is sold the certificate of registration is transferred into the name of the buyer.
2. Licensed. A new licence must be obtained every year. When applying for a licence you must produce registration, fitness and insurance certificates and pay the current licence fee.
3. Insured against compulsory risks (i.e. death or bodily injury to or damage to the property of any person caused by the vehicle - see Section Number 16 on Insurance).

You must not drive on a public road without a driver’s licence which covers the types of vehicle that you drive. If you are: under 16 you cannot drive on a public road; under 17 you can
only drive a motor cycle; under 18 you cannot drive a hire car, bus, lorry or tractor. Buses (including minibuses) and hire cars must have special licences and carry stickers attached to the inside of the windscreen. Hire car drivers and bus conductors must also get special licences.

**Using The Vehicle On The Road**

1. **Passengers**

   The number of people that can be carried in a car, bus or lorry will be stated in the certificate of registration. You must not carry more passengers than the number stated less one (yourself).

   If you are riding a motorcycle you can only carry one pillion passenger. (N.B. If you are riding a bicycle you cannot carry anyone except a child under 7 if the bicycle is specially adapted.)

2. If you have an accident in which someone is killed or injured or property is damaged you must:

   (a) stop;
   
   (b) give your name, address (and that of the owner if different) and the car registration number and show your driver’s licence to anyone injured (if possible), the driver or passenger of any other vehicle involved and any person who reasonably requires the information; and
   
   (c) give as much help to the injured as you can.

And if anyone is injured or you haven’t given your name and address to anyone on the scene you must report the accident to the police as soon as possible and in any event within 24 hours.

3. **Driving Offences** - If (Maximum penalties appear in brackets) you cause the death of someone while driving a motor vehicle you can be charged with either manslaughter (life imprisonment) or causing death by dangerous driving (5 years imprisonment)

   Whether or not you are involved in an accident you can be charged with dangerous driving (1st conviction $500 fine or 6
months imprisonment); 2nd and later $1000 fine or 6 months imprisonment), or careless driving ($200; no disqualification for first offence).

**N.B.** Generally, you cannot be convicted of dangerous or careless driving (or speeding) unless you were warned of possible prosecution at the time of the offence, or you were served with a summons for the offence within 14 days, or you were given notice of intended prosecution within 14 days.

You can be arrested without warrant by any police officer who sees you driving dangerously or carelessly unless either you give her/him your name and address or you produce your driver’s license for examination.

**Disqualification.** In addition to being fined or imprisoned, if you are found guilty of a driving offence the court may (and in some cases must) disqualify you from driving for such period of time as it thinks fit or as is fixed by law.

**Endorsements.** If you are disqualified this fact must be endorsed on your driver’s license. In other cases the court may order that your license be endorsed with particulars of your conviction. If you don’t get any more endorsements for 3 years you can apply for a new licence free from endorsements.

**N.B. If you ride a bicycle carelessly** or without proper consideration for others you will be guilty of an offence (1st conviction $50 fine; 2nd or later $100 fine).

4. **Duty to stop & give information**
   (a) You must stop on being asked to do so by a police officer in uniform.
   (b) You must give your name and address to anyone reasonably asking for it if you are alleged to have committed a traffic offence.
   (c) If you own a motor vehicle you must identify the driver of it if it is alleged that she/he has committed a traffic offence.
Hire Cars & Minibuses
A driver or conductor of a hire car or minibus cannot without reason refuse to carry you if you offer yourself as a passenger (e.g. by standing at a bus stop or flagging down a hire car).

But you must not be carried if
(i) you are drunk or in any other state as to be a nuisance to other passengers;
(ii) you have an infectious disease; or
(iii) you are not decently dressed.

And if you
(i) use obscene language or act in a disorderly manner;
(ii) insist on joining an already full vehicle; or
(iii) get in a vehicle while carrying a loaded firearm, anything dangerous, offensive or bulky, you can be removed from the vehicle by any police officer in uniform at the request of the driver or conductor and you must give your name and address to the driver or conductor or to a police officer in uniform at the request of the driver or conductor.

Drivers & Conductors must:
- not be loud annoying in touting for passengers;
- not smoke while passengers are on board;
- be clean, properly dressed & polite;
- not give wrong information to passengers about where the vehicle is going, by what route and the fare for any journey; and
- take care for the safety of passengers.

Seat Belt
There are now provisions requiring everyone seated in a vehicle to wear a seat belt. Children are also required to be restrained (car seat).

There are severe penalties for non compliance with these provisions.
Lawyers

Who Are Lawyers?
Lawyers are persons who have been admitted to practice law before the courts. They are called legal practitioners and attorneys-at-law. The term “counsel” is also used.

Lawyers in private practice represent private persons while those in government service represent the State. Most lawyers in government service work at the Attorney General’s Chambers or the Chambers of the Director of Public Prosecutions.

What Do Lawyers Do?
* Give legal advice
* Prepare legal documents
* Represent clients in and out of court

Some lawyers specialise in particular kinds of legal work, such as criminal or civil work, litigation (contested court actions) or matters not involving litigation.

Do I Need A Lawyer?
In both criminal and civil matters you have the right to act on your own behalf or to employ a lawyer of your choice to act for you.

In all but the smallest and simplest matters it is better to have a lawyer’s advice and presentation (if needed). But lawyers’ services do not come free and unless you can afford to pay for them you may have to do without.

Some lawyers are sometimes prepared to act for poor persons for no or little charge; the Guyana Association of Women Lawyers runs a small legal aid clinic and murder accused are provided by the State with a lawyer if they can’t afford one.
But there are many people who suffer great disadvantage for lack of legal help because they can’t afford a lawyer.

**What Authority Does My Lawyer Have?**

Your lawyer must act on your instructions but she/he has control over how they are carried out.

Implied authority. You can expressly limit what your lawyers can do on your behalf but if you don’t you will be taken to have authorised her/him to:

(a) conduct the presentation of your case in court as she/he sees fit whether you are there or not, e.g. in deciding whether or not to call or cross-examine a witness, agree to a settlement or consent to judgment.

(b) accept service of documents on your behalf, except those which must be personally served upon you, e.g. a divorce petition; and

(c) receive payment of debts, damages and costs.

**Can I Have More Than One Lawyer?**

You can have as many lawyers as you like (and can afford) but if you already have a lawyer other lawyers should not advise you without your lawyer’s knowledge and consent. To do so would be unethical.

**Can I Dismiss/Change My Lawyer?**

You can withdraw your instructions from (i.e. dismiss) your lawyer at any time you like and either take the matter over yourself or employ another lawyer.

If you have paid your lawyer for the work she/he has done for you she/he must give you your papers relating to the matter. If you haven’t paid, your lawyer can keep your papers until you have.

**What Obligations Does My Lawyer Have To Me?**

1. To use reasonable skill and care. If your lawyer fails to do this you may be entitled to damages for negligence and breach of duty. But losing your case doesn’t automatically mean that your lawyer has been negligent.
2. To act in good faith. Your lawyer must make full disclosure to you of any conflict of interest, e.g. if she/he is personally interested in a matter which she/he is handling for you.

3. To keep your confidences. This duty is so strong that even if you tell your lawyer that you have committed a crime she/he must not tell the police.

How Much Do I Have To Pay My Lawyer?

1. Fixed fees. The amount that your lawyer can charge you for certain work (e.g. in relation to buying and selling a property and obtaining probate or letters of administration of an estate) is fixed by law. You can ask to be shown how the amount you are asked to pay has been calculated.

2. Fees by agreement. You and your lawyer can agree how much you will pay for the work she/he is to do for you. This agreement must be in writing. If you are making a claim for damages you may agree to pay your lawyer a percentage of the damages awarded. The percentage should be reasonable and certainly not more than 33% except in very small cases.

3. Fair and reasonable fees. If your lawyer’s fees are not fixed by law or agreed with you she/he can charge what she/he likes but the amount must be fair and reasonable.

4. Taxation. If you have paid the amount charged but are not satisfied that it is fair and reasonable you can, within 1 month after payment, require your lawyer to have the amount charged taxed by the Registrar of the Supreme Court. The Registrar will look at the amounts charged for items of work done and allow or disallow them depending on whether or not she/he thinks they are fair and reasonable.

5. Your lawyer cannot sue you for unpaid charges unless she/he has had a bill taxed by the Registrar and an account of the amount allowed on taxation has been delivered to you.

6. Your lawyer’s bill should contain separate amounts for professional fees charged and expenses paid on your behalf and give credit for amounts paid on account.

7. If you have made payments on account you can require your lawyer to give you a bill (showing work done and the charge for
it) every 3 months.
8. Make sure that you get a receipt for all payments made.
9. Remember that your lawyer can keep your papers until you have paid for work done.

If I Win The Case Won’t My Costs Be Paid By The Other Side?
If you win the court will probably order the other side to pay your costs.
The amount of these may be fixed by the court, agreed between the lawyers or taxed by the Registrar.
But whatever the amount, it will not be as much as the amount you can be charged by your lawyer. This is because your lawyer can charge you for certain kinds of work that a losing side doesn’t have to pay for. In some cases your lawyer may agree to accept the costs paid by the other side in settlement of her/his charges.

How Do I Make A Complaint Against My Lawyer?
If you are dissatisfied with your lawyer, e.g. she/he has taken your money but failed to turn up in court or has failed to follow your instructions, you can:
1. Make a complaint to the legal practitioners’ disciplinary committee. A formal written complaint must be made to the Registrar (who must tell you all you need to know about how to make a complaint), who passes it on the on to the committee. If the committee thinks the complaint doesn’t show any misconduct it can dismiss it but must first give you a chance to put your case. If the committee thinks that your complaint may be well founded it will hold a hearing which you and the lawyer should attend. At the end of the hearing the committee can dismiss the complaint or refer it to the judges of the High Court. If the complaint is referred to the judges they will hold a hearing. If the lawyer cannot give a good reason why she/he should not be disciplined the judges may order that she/he be suspended from practice for as long as they think fit or that her/his name be struck off the Roll of lawyers. A lawyer whose name has been struck off the Roll is not entitled to practice law.
2. **Write to the Chancellor of the Judiciary, the Attorney General or the Chief Justice.** The complaint will be investigated and if it is found to have merit the lawyer will be called upon for an explanation. If the explanation is not satisfactory the matter will be referred to the judges of the High Court (See 1 above).