THOMAS, JOHN & CO.
VOLUME 1 ISSUE 2 - 2008

PRIMA FACIE— AT FIRST GLANCE...

FOREWARD

INSIDE THIS ISSUE:

SPECIAL POINT OF INTEREST:

" The verbal jousts at Trial

The insults at the Bar

Par for the course for lawyers

We love a legal spar!" - Loy Weste

We at Thomas, John & Co. are encouraged by the reviews received following Issue 1 of our newsletter. We are therefore please to release our second issue which we hope will be equally well received.

In this issue we aim to provide legal information and education to our clients and the public at large on legal topics and issues which we trust will prove as much of interest to the readership as they do to the lawyers who authored them.

Given the sharp changes in the global economy, and the startling turn of events in the financial markets over the last month, we have decided to add a global financial update to this feature, this time provided with the kind help of our friends at CMMB. This will be a feature in future issues with articles selected from among a group of distinguished analysts and financial consultant with whom we interact.

Once again welcome to the face of Thomas, John & Co.
Pleasant reading.

ARTHUR G.B. THOMAS and KELVIN JOHN

The Partners

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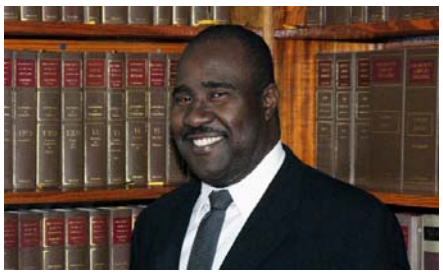
ABOUT US...



ARTHUR G.B.THOMAS, LL.B (Hons) (U.W.I.) L.E.C. LL.M (Int'l Tax'n) J.P.
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Arthur read law at the University of the West Indies, Cavehill Campus, Bridgetown, Barbados graduating with a Bachelor of Laws Degree, Upper Second Class Honours; Norman Manley Law School, Jamaica (Legal Education Certificate, 1991), Member, Notary Public of Antigua and Barbuda.

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He is a past Vice President of the Antigua Bar Association, a Notary Public of Antigua and Barbuda and Justice of the Peace in Antigua and Barbuda.

Practice Areas: Corporate Commercial Law, Civil Litigation; Land Law, Intellectual Property; Banking Law; Insurance, Industrial Law, Probate, International Taxation.

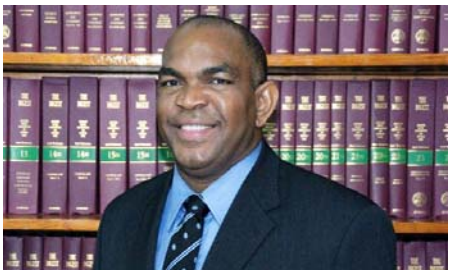
Lisa M. John LL.B (1st Cl. Hons) (UWI) L.E.C.

Lisa read law at the University of the West Indies, Cave Hill Campus, Bridgetown, Barbados from 2002-2005, graduating with a Bachelor of Laws Degree, First-Class Honours. From 2005-2007 she attended the Norman Manley Law School, Kingston, Jamaica where she completed the Legal Education Certificate, thereby allowing her to practice in all areas of the English-speaking Caribbean.

Member: Lisa has been admitted to the Antigua and Barbuda Bar.

Practice Areas: Conveyencing, Mortgages, Company, Commercial, Wills and Probates, Family and Personal Injury, both litigious and non-litigious as an Associate in the firm.

Lisa is currently reading for a Master in Corporate and Commercial Law with University of London, England.



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Kelvin was called to the bar of the Commonwealth of Dominica in 1993 having read law at the University of the West Indies, Cavehill Campus, Bridgetown, Barbados and obtaining the Legal Education Certificate from Norman Manley Law School, Jamiaca (1993). He joined the firm as a Partner in 1997.

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Loy read law at the University of the West Indies, Cave Hill Campus, Bridgetown,

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Kathleen A. Bennett LL.B (1st Cl Hons) (WOLV), BVDip (NLS)

Kathleen has been employed with the firm since September 2007 and has been engaged in the corporate/commercial department.

Kathleen read law at the University of Wolverhampton, Wolverhampton, England from 2003 – 2006 where she graduated with a Bachelor of Laws degree, First Class Honours. In 2007 she qualified as a Barrister-at-Law after completing the Bar Vocational Course at the Nottingham Law School, Nottingham, England.

She has been called to the Bar of England and Wales and is a member of the Honourable Society of Gray's Inn, England.

Kathleen will pursue the Norman Manley Law School Conversion Course in Kingston, Jamaica in September 2008 to qualify for the Legal Education Certificate which will allow her to practice law in the English-speaking Caribbean.

General Staff

The general staff comprises of highly trained individuals who bring not only academics but also years of experience. Most of the staff possess first degrees in business or related fields while others possess as much as 25 years experience in paralegal work.

IN THE MATTER OF AN APPLICATION UNDER THE MARRIED WOMEN'S PROPERTY ACT 1887

The singular most important facet of our legal system is its ability to evolve to reflect the social context within which it operates. Most alarming then, is the fact that in 2008, women in Antigua and Barbuda must still rely on an archaic 1887 Act to acquire a legal share in their matrimonial home.

The inapplicability of the Law to what currently pertains in our society is strikingly evident in the antiquated provisions of the Antigua and Barbuda Married Women's Property Act. Take for instance, sections 3 and 4 of the said Act which afford a married woman the privilege of holding property in her own name, the autonomy to contract as a "*feme sole*", and the liberty to keep her own wages, earnings and money as her own property. One must agree that the very language of the foregoing provisions is more reflective of the Dark Ages than the enlightened era within which we purport to exist.

The Act was no more than a pyrrhic victory for married women in 1887, and it therefore comes as no surprise that in the majority of Applications under the Married Women's Property Act today, women have found themselves unable to justify to the Courts their interest in the matrimonial home where their names are not found on the title deed. Undoubtedly, this is because the thought process which guided the formulation of the Act has continued to significantly influence the Courts which have had to interpret and apply the said Act.

The unsuspecting married woman who acted to her detriment in nurturing the family unit by dutifully handing over her entire monthly salary to her husband throughout the duration of the marriage, who cooked, cleaned and cared for her husband and children is now denied the very home which she has created without deriving any interest in the said home.

The Privy Council has stated that unlike some other Caribbean territories, Antigua and Barbuda has no equivalent of the wide powers of property adjustment enjoyed by divorce courts in the United Kingdom, and the applicable common law interpreting the Married Women's Property Act has not changed very much over the years.

The rights of a married woman to a share in the matrimonial property where her name is not found on the title deed is defined by the concepts of the Resulting Trust and Constructive Trust. The fundamental question to both trust concepts is "whether independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially".

The Resulting Trust is created by payment or part payment of the purchase price. As is often the case, our unsuspecting married woman, who handed over all her earnings to her husband or who made contributions to the current living expenses and outgoings, is unable to definitively prove that she contributed towards the purchase price. Domestic endeavour by itself is not sufficient to found a claim for an interest in the matrimonial home. As such, the married woman's application is usually denied.

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- **Our Vision is to be the # 1 provider of Quality and Efficient Corporate and Legal Services to our diversified clientele globally.**
- **Our Mission is being committed to providing a broad array of corporate and legal services specialized to meet the needs of our local, regional, and international clients; through premium teamwork, know-how, customer care, and the utilization of technological advances.**

FINANCIAL MATTERS AND ECONOMICS

The Butterfly Effect...

The End of an Investment Banking Era

'It has been said that something as small as the flutter of a butterfly's wings can ultimately cause a typhoon halfway around

the world..." – Author Unknown

This clever quote alludes to the popular chaos theory, which states that small variations in a dynamic system can result in large disruptive variations over the long-term. Drawing a parallel to the current financial crisis, this means that the subprime mortgage crisis resulted in more than just a domino effect. Rather, it led to a more cataclysmic, hurricane-like series of events. One which typically begins as an ominous windstorm, builds in momentum, mounts to the peak of its destructive fury and eventually dies down with each deathly blow it deals to obstructions in its path. When everyone thought the subprime bust of July 2007 was the worst financial crisis to hit global markets in the last decade, little did they know it was just the birth pangs.

The whole sub-prime debacle appeared to have peaked in the calamitous demise of Bear Stearns in February 2008. This was no small event given that Bear was one of the top five independent US investment banks. The Fed rushed in and brokered the sale of Bear to JP Morgan at fire-sale price, but not before the markets took a significant beating. Spreads above US Treasuries shot up, stock indices were down and everyone rushed to place their funds in safer securities such as US Treasuries or gold. In the ensuing months, as some degree of normalcy struggled to return, nothing too untoward seemed to shake the markets. Commodities rallied, Russia attacked Georgia, Chavez discharged the US Ambassador from Venezuela…these all seem to fade into the scenery compared to what we now know was ahead. The world refocused on other pressing events, on rebalancing their economies and the tornado was quietly re-building strength.

And then there were four...

September 2008 now marks one of the worst months in financial history as another, more intense wave of financial crises shook the markets. The month started off with distress signals from Fannie Mae and Freddie Mac, both Government Sponsored Enterprises (GSEs) and the United States' two biggest mortgage companies. The headwinds were gathering. No sooner had the Fed intervened to bailout these two iconic GSEs did Lehman declare bankruptcy sending shock waves through global financial markets. Monday 15 September, 'Meltdown Monday', as it has been coined in some circles saw a plummet of all major indices and by 17 September the EMBI+ index registered unbelievable spreads of 435 basis points above US Treasuries. As if that was not enough, Merrill Lynch underwent a forced sale to Bank of America to dodge asimilar bullet as the Fed stood by and held its hand from intervening in Lehman's demise. This marked the end of two more top US independent investment banks. Yet still, more turmoil prevailed as American International Group Inc (AIG) required

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For a Constructive Trust to be found, the parties' whole course of conduct in relation to the property must be taken into account in determining their shared or common intentions as to its ownership. The problem with this is that the Courts are of the view that the wife's dutiful conduct in taking care of the home, her husband and children is not quantifiable evidence to be applied towards ownership rights of the matrimonial home, but instead, is simply belittled as a matter of performance of her expected wifely and motherly duties.

This Article is by no means an attack on the sacred institution of marriage nor is it the faintest suggestion that married women should not continue to perform their marital duties. Instead, its purpose is to highlight the inadequacy of the outdated Law to fairly acknowledge and bestow basic property rights on married women in Antigua and Barbuda.

Contributor: Lisa M. John LL.B (1st Cl Hons) (UWI), L.E.C., Attorney-at-Law

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a US$85Million bailout and Washington Mutual (the largest savings and loan company in the United States) put itself up forauction and was eventually bought out by JP Morgan.

Things are now at critical mass as the eye of the storm beats down on the US economy. The intricately, interrelated nature of our globalised market has long set the stage for contagion. One has only to look around to see the butterfly effect. Subprime mortgages originated in the US, so when they went delinquent they hit the US economy and its financial markets hard. The US policy rate was continuously slashed to stimulate growth in a rapidly stagnating economy with little-confidence; the US dollar weakened to all time lows; investors sought to hedge risk by investing in commodities commodities skyrocketed; commodity prices affected the intricate trade balances among global economies; food and energy based inflation spiraled globally; and this further upset the economic balancing act of most economies as they faced challenges to growth alongside climbing inflation. A vicious cycle of global financial distress was set off and it isn't quite finished re-shaping economies and investment financing.

Drastic times call for drastic measures

Practically overnight, the US Securities and Exchange Commission (SEC) halted short selling of US banks, insurance companies and securities firms up to 2 October. The intention was to temporarily suppress potentially abusive short selling tactics that can drive share prices down, thereby giving the market time to re-stabilize in response to the shocks sustained on 'Meltdown Monday'. The Financial Services Authority in the United Kingdom also banned short sales on financial shares for the rest of the year and numerous other countries followed suit. Moving swiftly in the hopes of stopping the financial carnage, US Treasury Secretary, Henry Paulson, and Fed Chairman, Ben Bernanke, jointly proposed US$700billion bailout plan to attack the root cause of the whole mess....billions of dollars of toxic sub-prime mortgage debt still sitting on the books of numerous major financial companies.

And then there were...two?

Shifting focus back to the last two great US investment banks, Goldman Sachs and Morgan Stanley. Options for a way-forward seemed scarce given that fellow major investment banks (unable to sustain a run on assets as rumours grew and confidence fell) yielded to being bought out by 'universal' banks and the US government remained stuck in heated debate over the proposed bailout plan. Acknowledging that confidence in the broker-dealer model was rapidly evaporating, Goldman and Morgan proactively ensured their survival by opting to become regulated bank-holding companies. Goldman, true to its long-standing tactical expertise, further ensured its status in the financial pecking order by securing a vote of confidence (and a US$5billion capital injection) from the 'Sage of Omaha' himself, Warren Buffett.

As regulated bank holding companies under the US central bank, this means that Goldman and Morgan will have to abide by more stringent regulations especially in terms of capital requirements. The independent investment bank structure built on a broker-dealer model, which involves high levels of leveraging, can no longer withstand the high levels of solvency risk involved in an environment with flailing investor confidence. So is this it? Is this the end of high yielding investments and brilliantly engineered structured products? What about aspirations for lofty careers in this highly revered field?

What we can expect

Investors have lost faith in high yielding, highly leveraged, wholesale funding models. As we continue to witness the re-shaping of the financial landscape we can expect a new funding model to emerge involving a greater use of deposits.

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COMMENTARY ON UNREGULATED INVESTMENT SCHEMES (UISS) IN THE CARICOM REGION

In recent years (certainly over the last 2 years) Unregulated Investment Schemes (UISs) have mushroomed in some Caricom member states particularly Jamaica and Grenada. No doubt the phenomenon will continue to spread throughout the region as it offers fertile ground. All existing UISs claim high monthly returns (6-20% per month) which exceed those of the best performing stocks and mutual funds in the United States. All claim to be engaged in the foreign exchange trading.

Notwithstanding the claim that the economic activity of these UISs is foreign exchange trading, it is suggested that such high returns can only be paid using funds from new investors and that inevitably the schemes will collapse as old investors are paid using monies from new investors.

For the most part these UISs take the appearance of pyramid schemes or ponzi schemes. A pyramid scheme involves members who pay a subscription price to join the scheme. Each member is promised a reward (in cash or in kind, typically large relative to the subscription) for recruiting more members. As the large reward draws in members, the number of recruits required to be rewarded grows exponentially and quickly exceeds the target population leaving most members without the fruits of their investment. Ponzi schemes on the other hand promise to pay high rate of returns and whilst initial investors do receive such returns these returns are paid out from subsequent investors' contribution.

The present UISs in the Caricom Region give real cause for alarm. It is well documented that ponzi and pyramid schemes thrive well in environments with poor financial education, tolerance and/or cultural acceptance of informal financial intermediation and weakness in financial regulation against a backdrop of high inflation, declining real income, scarcity of alternative investment possibilities and economic downturn.

The IMF posits that UISs can inflict serious damage to financial and socio-political stability through the following principal channels:

1. Socio-economic strife where a sufficiently large member of households are precipitously subject to large losses;
2. The boom and bust phenomenon triggered by consumption caused by paper or real profits;
3. Fixed cost occasioned by government bailouts;
4. Reputational and other risks from money laundering or support of illegal enterprises by the UISs operators;
5. Potential loss of investor confidence leading to adverse effects on exchange markets;
6. Diversion of savings from public debt, bank deposit, stock and bonds, housing and other potentially productive assets into fraudulent UISs;
7. Loss of reputation for governments, regulators and financial institutions through association
8. Implication for banks exposed to losses on loans diverted to investments in UISs and permanent deposit losses.

In light of the above it is apparent that there must be some policy /legislative response to UISs in the Caricom region without delay. Whilst financial advisories and warnings may be a response in the short term Caribbean governments need to formulate some legislative response as well.

The time may now be ripe for regional governments by legislation to address the potential or real problem of pyramid or ponzi schemes as many countries around the world have done. For example Australia law strictly forbids the pyramid selling or promoting of financial products or the inducement of a third party to participate in a scheme to trade in financial product on the prospect of him or her receiving payments or other benefits in respect of the introduction (whether by himself of herself or by another persons) of other persons who become participants in the trading scheme. Under New York law the same activity, referred to as a Chain Distributor Scheme is strictly prohibited whilst Sri Lanka has enacted an Anti Pyramid Act since 2005.

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In the Eastern Caribbean, the harmonized Securities Act offers some hope that the unwary investor may be protected since it allows for the Eastern Caribbean Securities Regulatory Commission (ECSRC) to regulate 'Collective Investment Schemes' which Section 99(1) (c) the Act defines as " an investment contract, investment programme or any other arrangement with respect to properties of any description including money, the purpose or effect of which is to enable persons taking part in the arrangement (whether by becoming owner of the property or any part of it or otherwise) to participate in or receive profit or income arising from the acquisition, holding, management on disposal of the property or sums paid out of such profit or income.

Arguable, any investment scheme (whether it takes on the appearance of a pyramid scheme, a ponzi scheme or a scheme purporting to trade in the foreign currency) falls under the supervision of the ECSRC and may only conduct its business with a licence from the Commission. Notwithstanding, it is posited by the writer that further changes are needed to the legal framework as an assault on the unwary investor in these times of the economic uncertainty could spell disaster for economies dangerously dancing at the brink of collapse.

Contributor: Arthur G.B. Thomas LL.B (Hons), L.E.C., LL.M (Int'l Tax'n), J.P., Attorney-at-Law, Partner, Notary Public

CORPORATE GOVERNANCE

The last issue of Prima Facie introduced the corporation as a legal entity for daily business. We examined in general terms the role of Shareholders, Directors and Officers. In this issue we will take a more in depth look at the role and function of a Director. The applicable laws are the Antigua & Barbuda Companies Act 1995 more specifically Division D; Management of Companies section 58 to 104, and also the common law as declared in cases or judicial decisions.

Section 58 imposes a statutory duty on directors to exercise the powers of the company and the management of the business affairs of the company directly, or through the employees and agents of the company. In small private companies, shareholders often serve in the capacity of directors and officers as well. In large corporations and certainly in public companies, a professional management group runs the business under the supervision of the board of directors. At the end of the day, the ultimate responsibility for managing rests with the board of directors. Every director and officer of a company in exercising his powers and discharging his duties shall act honestly and in good faith in the best interest of the company. Also, there is a duty to exercise the care, diligence and skill that a responsible prudent person would exercise in comparable circumstances. In determining what the best interests of a company are, a director shall have regard to the interest of the company's employees in general as well as to the interest of its shareholders. A director is not liable as being in breach of his duty, if he relies in good faith upon financial statements of the company, represented to him by an officer of the company, or a report of an attorney-at-law, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him. Every director has two basic duties to the corporation, a fiduciary duty and a duty of care. These are very powerful concepts in Law. A Court will deal severely with a director who has acted in a manner contrary to one or both of these duties; but the Court will be very reluctant to question the decisions made by a board in a manner consistent with these duties. The respect the court gives to the decisions of an independent board which followed a diligent process, is referred to as the business judgment rule, described below.

A fiduciary relationship implies vulnerability and dependency on the part of the beneficiary (in this case the corporation as a "helpless artificial person") and an ability on the part of the fiduciary (in this case the directors) to exercise discretion. The policy considerations for characterizing the directors' relationship with the corporation as being fiduciary in nature stems from the need for a corporation's stakeholders (including shareholders, employees and creditors) to be confident that the members of its board and management team will not manipulate the corporation for their own benefit.

The duty of care requires directors to spend the time necessary to make an informed business judgment. Directors who are being careful and diligent will ask themselves whether they have the information they need in order to make a decision. Further, they will consider that information critically and will question management and outsiders decisions closely until they are satisfied with the response they received. Only then will they apply their business judgment to the matter before them.

The Courts will generally not substitute their own business judgment for that of the directors of the corporation if the directors acted in a manner consistent with their fiduciary duty and duty of care in reaching their decisions.

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MORAL NEUTRALITY AND THE LAW

It is believed in some spheres that laws are imposed upon individuals with a preconceived notion that they are to be obeyed. But the question then arises: what gives the law the authority to command obedience and does this authority create an obligation for individuals to obey the law? An answer to such a question could give rise to a complexity of perspectives. However this article will seek to briefly highlight some of these issues by considering the extent to which morality bears upon legal rules.

In the first half of the twentieth century the renouned theorist H L A Hart and Lord Devlin (an English judge) were engaged in a debate on law and morality and focused upon whether the law should interfere in moral issues or whether it should be morally neutral. This debate arose as a result of the Wolfenden Committee's Report in 1957 on Homosexual Offences and Prostitution. The report suggested that prostitution should no longer be a crime; however soliciting should be and should be punished more fiercely. It was suggested further that homosexuality should also no longer be a crime once it was done in private and the people involved were over twenty-one years and consented willingly. These suggestions resulted in the passing of the Street Offences Act 1959 and the Sexual Offences Act 1967 in England.

Notably the morals of a society tend to change with each era and are often reflected in the law. Consequently the law has seen it fit to interfere in moral issues. For example at the time of the Wolfenden Report, homosexuality was looked upon with disdain and was a criminal offence. Even shortly after it had been decriminalized, in the English case of Knuller v. DPP, (1973) an advertisement in a newspaper to enable homosexuals to contact each other was held to be a 'conspiracy to corrupt public morals'. This case shows that morality has been enforced through the judicial process. Lord Devlin would have seen Knuller's conviction as necessary in order to preserve the fabric of society.

Today, in England, homosexuals have no need to hide. Since the passing of the Civil Partnership Act 2004, people of the same sex who become 'civil partners' now enjoy the same rights as married couples, with very few limitations. Also the enactment of the Gender Recognition Act 2004 allows transsexuals who have obtained a gender recognition certificate, to marry in their acquired gender. Obviously, the morals of the British society have changed and this has clearly been reflected in the law. This fact appears to show that law and morality are intertwined and that morality can openly determine the course of law through legislation.

Very often, the majority's view is classified as that of the 'reasonable man'. Critics have claimed that the view of the reasonable man may be misguided as his opinion is often based upon what he has deduced from the press. In Dred Scott v. Sandford, (1857) (an American case), legislation was passed outlawing slavery in Louisiana. However, this was challenged on the ground that average Americans did not have a problem with slavery. The Supreme Court accepted this view and declared the legislation void. Clearly, the majority can usually succeed in enforcing its view upon a substantial minority.

In Brown v. Board of Education, (1954) (another famous American case), legislation was passed to the effect that Black and White children should not be segregated in schools. In this case, the Supreme Court did not ask the reasonable man, but experts to give evidence. The experts found that segregation encouraged White children to feel that they were superior, while making the Black children feel inferior. In the end, it was held that the development of this superiority/inferiority complex would only harm the children. Consequently the legislation was upheld. These particular examples show that the opinion of the majority cannot always be relied upon and therefore, a legal system must apparently strive to be morally neutral.

It has been argued that law cannot be based upon morality as morals are often based upon religion. Thus a legal system must be morally neutral. In many developed countries where there are several mainstream religions, it seems impossible for there to be a unified moral code. Most of these religions oppose the others' beliefs and believe that their particular morals are correct. So how can laws of such a society be based upon morals? It is at this point that theorists have argued, that most legal systems legislate against such things as murder, drugs and pornography which are often forbidden by these religions. Therefore, it appears that there can be a shared moral code within a society which can influence a legal system. This is further evidenced by the existence of Human Rights Act 1998 in such a multi-cultural society as the United Kingdom.

It is widely accepted that a citizen of a state should obey its laws. The fact that there are sanctions may be the reason why some people obey the law and not because they believe they are under an obligation to do so.

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Therefore, it appears that, were there no sanctions persons would not see the need to obey the law. Furthermore, there are times when fear, combined with ignorance in some instances, compels persons to obey the law. For example, in Germany when the Nazis ruled, the Germans were made to believe that the Jews were the enemy and that they were to be terminated. Anyone found assisting the Jews would suffer at the hands of the law.

It has been argued that "courts have no alternative but to apply a properly enacted statute however evil its claims may be. A victim of such law may rebel on moral grounds but legally speaking he has no case…" However some theorists disagree and would contend that "when a system calling itself law…has only to resort to forays of terror in the streets, which no one dares challenge, in order to escape even those scant restraints imposed by the pretence of legality – when… [this has] become true of a dictatorship, it is not hard …to deny it the name of law (H O Pappe 'On the Validity of Judicial Decisions in the Nazi Era'(1960) 23 Modern Law Review 260, 262).

If the law is in force it is held to be justified and will command the obedience of its citizens. However what is an unjust rule will differ from era to era. An excellent example is the English case of R v. R (1991). Prior to this case a man could not legally rape his wife. However in this case it was acknowledged that there was a need for the law to adjust to changes in society and for such an unjust rule to be abolished. The question can then be asked: are citizens to wait for courts to correct the law or ignore unjust laws? This enquiry leads to the development of the argument that, to take such an approach 'is a recipe for anarchy'.

It must be acknowledged that a person may make a conscientious objection to the law. For example, during the World Wars, persons, such as Muhammed Ali, refused to fight on moral grounds and suffered the consequences.

Further it appears that disobedience to the law in certain circumstances is justified. This stance appears to be correct, as all democratic legal systems must make allowances for civil disobedience. Trade unions for example, would argue that where the state extracts labour from its citizens without providing them with adequate compensation and working conditions, these citizens are entitled to demonstrate or protest against such behaviour. Further, during apartheid in South Africa, the Blacks practiced civil disobedience because they believed that it was immoral for the state to infringe upon their rights merely because they were black. The civil rights movement in the United States is another example, where people refused to obey the law because of its manifest immorality.

Notably, one of the theories put forward for obedience to the law is that, it is not good to disobey the law because of the danger of setting a bad example. However, throughout history people who have lead some of the most memorable acts of civil disobedience, for example, Martin Luther King Jr. during the civil rights movement in the United States and Nelson Mandela in the course of the apartheid in South Africa; have been made out to be heroes – persons who have championed the cause of their people. However it could be argued that these individuals are being rewarded for breaking the law. Although, it must undoubtedly be realized that such persons are not merely revered because of their disobedience, but for the reason behind it. These persons and others like them are seen as having stood up to the state for some moral cause.

On that account, these examples of civil disobedience show that although a citizen may be under an obligation to obey the law, they are not obliged to do so. However in each case those who refused to obey the law suffered the consequences. Civil disobedience in America did not result in anarchy and America remains one of, if not the greatest and most stable democratic country in the world.

It can be argued that the symbiosis of law and morality must be acknowledged in order for one to accept that society needs some degree of shared morality for it to survive.

On balance therefore, it is true that within a society there are bound to be differing moral values. Therefore, a legal system must apparently strive to be morally neutral. However, it has been established that morals often influence the law. Therefore, it seems only correct that the law should interfere in moral issues. Consequently, the moral neutrality of a legal system seems only to be an ideal, which is defeated by the plethora of evidence to the contrary.

Contributor: Kathleen Bennett LL.B 1st Cl (Hons) (WOLV), BVDip (NLS) Para-Legal

BUYER BEWARE

The perception of Antigua as a country with a laissez-faire approach to life blends neatly with what actually pertains in our country. After all, tourism is our main industry. However, the subtle ramifications of this reality are that such a laid back approach appears to have even permeated the attitude of our legislature in creating the laws which govern the relationship between a proprietor/vendor of land and a purchaser. Indeed, the legislature is rendered even more culpable for its hands-off approach, in light of the growing trend of haphazard subdivision by vendors, who sell their lands without first making adequate provision for access to the subdivided parcels.

The current position of the law as stated in the Registered Land Act of Antigua and Barbuda is that, save by an express grant of a right of way, a purchaser has no legal right to acquire from a vendor any right to access one land over another parcel of land if a right of way was not in existence at the time the land was first registered.

Undoubtedly the legislature intended to ensure that any dealings with land should be first registered in order to comprehensively reflect the true intention of the parties. But as the old adage goes, the road to hell is paved with good intentions. At present, the archaic position of the law leaves the unwitting purchaser who has failed to ensure that a promised right has been registered by the vendor, only with recourse in equity. The vendor however is afforded the right to rely on the fact that the existing right of way had never been registered, as conclusive evidence that he never intended to provide the purchaser with the said right of way.

It is true that the High Court of Antigua and Barbuda has taken steps to redress this faux pas by acknowledging that a right of way can be expressly created by an implied grant of such a right of way as contained in the conveyance agreement. Therefore, such general words in a provision as: "...the vendor grants plot A with all rights of easements, ingress and egress pertaining to the land..." may be taken as preventing the vendor from later stating that he did not grant the purchaser such a right of way over any parcel of land. The vendor therefore cannot now rely on his/her lack of registration of a right of way to state that no such right was granted to the purchaser.

But what of a purchaser who was promised a right of way but failed, whether by general words or specific reference, to ensure that any mention of the said right of way was contained in the conveyance agreement? The unfortunate reality is that the Registered Land Act offers him no legal recourse, and he must seek the equitable arm of the Court for assistance to conveniently access his newly acquired parcel of land.

It would therefore appear that throughout the admittedly intricate task of bringing all the unregistered lands of Antigua and Barbuda under the ambit of Registered Land Law, the legislature have managed to make a meal of a relatively simple issue with regard to Easements, such issue having been previously adequately addressed by our colonial forefathers well over a century ago.

Certainly, Barbados, The Bahamas, Jamaica, Dominica, St. Kitts and Nevis, Trinidad and Tobago and Grenada have all incorporated the following English provision which would rectify a glaring omission from our own Act: "*A conveyance of land shall be deemed to include, and shall by virtue of this Act operate to convey with the land, all buildings, erections, easements, ways, liberties, privileges and advantages whatsoever appertaining or reputed to appertain to the land.*"

Should this provision be incorporated into our Registered Land Act it would forever resolve the age old debate of whether a right over any parcel of land was granted or whether the vendor intended to grant such a right to use the land in a particular way.

More significantly, vendors would be prevented from relying on the absence of the registration of a right of way as an absolute indication that no such right could have accrued to the purchaser from the vendor.

We should hope that the legislature will quickly follow suit and "cog" the foregoing provision from the mother-land, such that each purchaser can truly enjoy their unfettered entitlement to a little bit of the island we know as paradise.

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Greater regulation will overshadow this model with more stringent requirements for disclosure. Strangely enough, had the up-tick rule (abolished in July 2007) still been in place there might not have been need for a ban on short selling. The rule would have basically required any short sale to be entered only at a price higher than the last trade. That way it would have been more difficult for short-sellers to abuse the system and drive down share prices. But this is only one aspect of the regulatory melee. Much more regulation is needed to tame the, "…crazy culture of greed and overreaching and overconfidence in trading algorithms," according to Charles Munger, longtime business partner to Warren Buffett. Because of the relationship between risk and return, we should expect that this new, less-risky, deposit-based model will also yield lower returns. Investment banks boomed over the last few years not only due to high leverage models but also to constant innovation with new dynamic investment instruments like mortgage backed securities (MBSs), collateralized debt obligations (CDOs), Adjustable Rate Mortgages (ARMs) and the likes. Unfortunately, insufficient regulation together with inadequate risk assessment and understanding of these complex assets led to the chaos that financial markets have now found themselves in. It will be some time again before new exotic investment structures come to the market and evenmore time for markets to warm up to them. The world will vividly remember, for some time yet, the merciless battering that this last wave of structured products had to offer.

As for careers in the investment banking field, there is likely to be a re-assessment of the generous remuneration packages investment bankers now enjoy. There is a call for greater corporate governance, which would essentially require-greater accountability for actions and decisions that affect investors. The field of investment banking basically grew phenomenally at unsustainable levels, which encouraged 'rushed jobs' that churned out new products whilst paying little attention to risk details and associated repercussions. The financial sector is now undergoing a consolidation phase where we see more mergers and acquisitions as banks try to re-coup and re-strategize. The careers are still there, albeit not as lofty as before, and will come with added pressure to engineer products that can generate returns within acceptable levels of risk under more stringent regulations.

Like the seemingly insignificant flutter of a butterfly's wing, one structured product – Sub-Prime Mortgage Backed Securities – tanked; affecting every other structured product that had spun off from it; dragging the whole US economy down; realigning world economic orders; affecting global financial markets and coming full circle to reshape the very field that created it: Investment Banking.

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The "business judgment rule" shields the decisions of directors from judicial second-guessing if those business decisions were made honestly, prudently, in good faith and on reasonable grounds. It will of course, be important that the steps taken to reach an informed decision be documented so that, should the decision of the board come under scrutiny at a later date the board will be able to demonstrate that it had an appropriate process.

Sections 91 to 94 of the Companies Act regulate conflict of interest and establishes rules of conduct for directors and officers. Parliament recognized that a complete prohibition of the corporation, doing business with a director or any entity in which a director has an interest is impractical and has the potential to create real problems. For example, it can preclude the corporation from doing business with key customers, suppliers and service providers serving on the board. It can also make it difficult for the corporation to attract to its board individuals who have the knowledge and experience which would be useful to the corporation, because they would not want to put themselves in a position of not being able to do business with the corporation. The Companies Act provides a procedure for the director to follow, which would allow the corporation to enter into a contract in which the director has an interest without any of the negative consequences which the Courts historically imposed, provided that the deal is fair to the corporation.

The procedure for dealing with conflicts of interest is quite technical and must be followed carefully. The director must notify all other directors of the corporation in writing of this interest generally at the time when the corporation first becomes interested in the transaction. The Director shall not vote on any such resolution relating to the transaction unless the director's interest in the contract is declared and disclosed in reasonable detail to the shareholders of the company, and the shareholders resolution is approved by not less than two-thirds of the votes.

The above information clearly reveals that being a director of a corporation is more than a matter of status; it is a serious matter of Law.

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WHO WE ARE

THOMAS, JOHN & CO. was established in January 1997 with Arthur G. B. Thomas being the founding partner. Prior to January 1997 he practiced as a sole practitioner under the style of Thomas & Co. He was joined from the 2nd day of January, 1997 by Kelvin John who, prior to then, practiced privately in the Commonwealth of Dominica.

Today, we are a full service law firm and have developed a strong international outlook as Antigua and Barbuda continues to assume the role of an important offshore center; hence its specialization in the areas of Company incorporation and administration, establishing and licensing of banks, trust and insurance companies, inbound foreign investment, real estate development and conveyancing, while continuing to meet the needs of local clients with the provision of a wide range of other legal services.

Corporate secretarial, administrative, management and trust services are provided to International Business Corporations and other international corporate vehicles through Corporate and Trust Services (Caribbean) Limited while ship management services are handled through Maritime General management Company Limited, both companies wholly owned by the firm.

The firm is well appointed in the main commercial area of the capital city, immediately adjacent to the High Court of Justice which forms a part of the Government Office Complex in St. John's, the capital city of Antigua.

The core practice areas of the firm cover banking, corporate, insurance, litigation, local practice, company formation and management, trusts, interactive gaming, international shipping, international taxation and mediation.

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For more information on the scope of services please visit – www.thomasjohn.com; www.caribcats.com and www.caribcats.com.cn. or contact us by telephone on (268) 460-5860/1; 562-6161/3 or Fax: (268) 562-1810.