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A Comparative Perspective: Marriage, Engagement, and Divorce Laws in Guyana, Trinidad and Tobago (TT) and the United States (US)

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In the Commonwealth Caribbean (CC) (CARICOM) region, precisely Guyana and Trinidad and Tobago (TT), marriage laws play a significant role in shaping family dynamics and influencing individual rights. These laws can dictate various aspects of marital relationships, including the legal recognition of unions, rights to property, and matters related to child custody. However, in the United States, they offer a diverse and decentralised approach to family law, where legal frameworks are governed by individual states rather than a single, unified national system. To illustrate the complexity of the U.S. system, this paper draws upon the laws of two contrasting states: California and Connecticut. California operates under a community property framework, where marital assets are generally divided equally between spouses. In contrast, Connecticut employs the equitable distribution model, which grants courts broad discretion to allocate property in a manner deemed fair, though not necessarily equal. This comparison highlights the legal diversity within a single national jurisdiction and offers an informative counterpoint to the family law systems of Trinidad and Tobago and Guyana. Understanding these legal frameworks is essential for individuals navigating family life in these areas. Both regions, as former British colonies, share a common English legal heritage and have incorporated English law through a series of legislative ordinances and adaptations. The complex interplay of colonial legacies, cultural diversity, and contemporary legal reforms defines the growth of family law in the Caribbean. However, both regions have developed distinct approaches to family law that reflect their various cultural structures and demands. To begin with, the paper will focus on the legal frameworks that govern marriage (however, it will not go into details of same sex marriage due to the fact that both regions do not legally recognise same sex marriage), engagement, and divorce in Trinidad and Tobago (TT), Guyana and the US. It also seeks to examine how post-colonial legal systems have evolved to suit modern social demands while remaining culturally relevant. Against this backdrop, the paper undertakes a doctrinal and comparative analysis, aiming to highlight key similarities and differences through an examination of secondary data and ethnographic research. Notably, although colonial roots account for many similarities, distinct differences emerge from cultural variations and legislative adaptations. The

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paper concludes that while both jurisdictions share a common law trait for engagement, the United States (US) demonstrates greater flexibility and adaptability in supporting evolving family dynamics. Nevertheless, TT and Guyana divorce model promotes stronger reconciliation practices, and their matrimonial laws are developed but not inclusive as they are yet to uniformly recognise same-sex marriages unlike the US who has uniformly recognised same sex marriages akin Connecticut becoming one of the states to prohibit marriage for individuals under the age of eighteen (18) without exception unlike California that allows marriage at any age.

Keywords: *Marriage, Engagement, Divorce Laws, Family law, Same Sex Marriages, Common law, Comparative law, Guyana, Trinidad and Tobago, Caribbean, Caricom, US, California, Connecticut, North America, Islamic Law, Barbados, St Kitts and Nevis, Caribbean Court, Cohabitation, Spain, Hindu Marriage, Orisa Marriage, Christian Marriage, Muslim Marriage, and Access to Justice.*

Introduction

It is imperative to state that Trinidad and Tobago and Guyana are both in the Southern Caribbean.[1] The two regions or states have been described as part of the 'last frontier' of British colonisation in the Caribbean, in the late 18th and early 19th century.[2]

Given the short period of British colonisation before the end of slavery in 1838,[3] the colonial governments in both territories aggressively used Indian indentured labour to meet the shortfall in labour on the sugar plantations.[4] Thus, Indian immigration in the second half of the 19th century until the early 20th century has contributed to both states being the most racially and ethnically diverse in the Anglo Caribbean.[5]

For instance, a dual family justice system developed for many decades, as immigration laws applicable to Indian indentured workers provided for some recognition of their personal laws, without granting full de jure recognition of their marriages.[6]

On the one hand, in the aftermath of slavery, many of the Afro-Caribbean descent fell outside the marriage-centred family justice system because marriage rates were low.[7] This was the context in which Professor Keith Patchett identified a substantial gap between family law and the way of life of Afro and Indian Caribbean

[1]News Global (2020).
[2]Kirk Meighoo (2021).
[3]Antoine (2008) at 18.
[4]Dow (2021).
[5]Ibid.
[6]Patchett (1959).
[7]Ibid.

people.[8] Since the 1970s, significant reforms to family law have been implemented in both countries, following the post-independence period.[9]

To reiterate, this study will not focus on same sex marriage because in 2025 in TT, same sex marriage was criminalised, in contrast to the English-speaking Caribbean region, Guyana, though not criminalised, sex marriage is not legally recognised.[10] However, in St Kitts & Nevis, in 2022, it rescinded its criminalisation of homosexuality, although same sex unions are not allowed, foreign same sex unions (in accordance with the relevant foreign law) are recognised in a limited way.[11]

According *to Merriam*-Webster Dictionary, Family law is *an area of law that deals with family relations*, including divorce, adoption, paternity, custody, and support.[12] In the landmark case of *Hyde v. Hyde and Woodmansee* the court defined 'Marriage as the voluntary union for life of one man and one woman, to the exclusion of all others.'[13]

A comprehensive definition of marriage was given by Section 26 (a) of the Matrimonial Proceedings and Property Act, Barbados. It describes marriage as an institution that grants a distinct status, impacting not only the individuals involved but also having implications for third parties who interact with the married couple.[14]

Baroness Hale asserted that 'in English law and by extension, law in CC jurisdictions, marriage is best understood as a mixture of a contract and a status.' First, the parties are only partially free to determine all its legal consequences for themselves. They contract into which the law of the land lays down; finally, their marriage also has legal consequences for other people and the state.'[15]

The definition underscores the significance of marriage within society and its broader effects on community knits. However, in most CC regions, same-sex unions are not recognised as marriages.[16] Essentially, parties must be between a man and a woman for the marriage to be deemed valid.[17]

Lending credence to the above, is Section 13 (1)(c) of the Matrimonial Proceedings and Property Act of Trinidad and Tobago[18] provides that a marriage shall be void if the parties are not respectively male and female.

In contrast, Guyana does not address same sex unions. Instead, the definition and legal framework are interpreted based on the language used throughout the

[8]Ibid.
[9]Ibid.
[10]The above viewpoints was gotten from Interviews on the street conducted by the writer and observations- Chinwe who works in Trinidad and Tobago on April 10th 2025.
[11]Human Rights Watch (2014).
[12]Family law in Merriam-Webster.com Legal Dictionary. https://www.merriam-webster.com/legal/family%20law
[13](1866) LR 1P&D.
[14]Section 26 (a) of the Matrimonial Proceedings and Property Act Barbados.
[15]Herring (2012) at 10.
[16]The above viewpoints was gotten from Interviews on the street conducted by the writer and observations- Chinwe who works in Trinidad and Tobago on April 10th 2025.
[17]*Corbett v Corbett* [1970] 2 ALL ER 33
[18]Matrimonial Proceedings and Property Act 1972 Trinidad and Tobago, Chap 45:51

Act.[19] For instance, phrases such as 'man' and 'woman' or 'husband' and 'wife.'[20] Thus, it can be inferred that the stance is more clearly stated in TT.

Additionally, the author observed that Marriages are required both under common law and matrimonial legislations of the CC Regions, specifically in TT and in Guyana, to be monogamous both in civil and religious marriages. Henry v Henry corroborates the above view.[21] Hitherto, that not only is marriage invalid if not monogamous, but in Trinidad and Tobago (TT), bigamy is recognised as an offence under the Offences Against the Person Act[22] in TT.

Conversely, Section 83 (1) of the Criminal Law Offences Act Cap 8:01 of Guyana.[23] its reveals commonality with TT. It is essential to state that Family law systems can be influenced by religious and cultural nuances.[24] For example, family law in Islamic majority countries will typically reflect Muslim traditions, values and religious precepts.[25]

On the other hand, marriage and non-marital unions have distinct legal implications. For instance, in Trinidad and Tobago, Guyana, and throughout the Caribbean Community (Caricom) region, marriage laws play a crucial role in shaping family life and safeguarding individual rights.[26] Furthermore, these regions benefit from a shared English legal heritage, with the exceptions of Barbados, Jamaica, Antigua and Barbuda and St Kitts and Nevis.[27] However, TT was also influenced by Spain, who were their colonisers before the British. The Spanish governed TT from 1498 until 1797. They left a significant mark on the island's culture, language, and history.[28]

On the contrary, Guyana was influenced by Roman-Dutch law; however, it transitioned to English law,[29] creating a complex and unique hybrid system. This system is further distinguished by unique socio-cultural adaptations.[30] Family law is profoundly shaped by the prevailing social and cultural norms, more so than many other areas of law. This influence presents an opportunity to reflect on the values and norms that define family relationships within Caribbean jurisdictions.

As these cultural dynamics evolve, it is encouraging to see them being increasingly integrated into the legislation that governs family matters, fostering a legal framework that resonates with the CARICOM values.[31] Although both Trinidad and Tobago and Guyana have preserved certain elements of English matrimonial law, there have been notable shifts from it.

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[19]Laws of Guyana Matrimonial Causes Act 45:02.
[20]Ibid.
[21]*Henry v Henry* (1959) 1 WIR 149.
[22]Section. 55 Offences Against the Person Act, Trinidad and Tobago.
[23]Section 83 (1) Criminal Law Offences Act Cap 8:01, Guyana.
[24]Parkinson (2015) at 2.
[25]Ibid.
[26]Gibbons (2013) at 8.
[27]Ibid.
[28]The above viewpoints was gotten from Interviews on the street conducted by the writer and observations- Chinwe who works in Trinidad and Tobago on April 10th 2025.
[29]Jebodh (2019) at 112.
[30]Fraser (1972) at 68.
[31]Nunez-Tesheira, (2016) at 2. .

On the one hand, the United States offers a diverse and decentralized approach to family law, where legal frameworks are governed by individual states rather than a single, unified national system.

While certain federal court decisions, such as the Supreme Court of the United States case of Obergefell v. Hodges[32] establish federal constitutional protections applicable across all states, the detailed regulation of marriage, divorce, and cohabitation remains within individual state jurisdiction.

This structure has produced a wide array of legal doctrines and procedures that reflect both historical influences and contemporary social values that can vary widely from state to state.

Marriage Laws in Trinidad and Tobago (TT) and Guyana

Trinidad and Tobago's matrimonial legal framework exhibits a diverse approach through a complex combination of civil and religious laws. The Marriage Act[33] provides essential legislation that establishes the fundamental requirements for civil marriages. It outlines key aspects, including procedural validity and age restrictions.

Section 8 of the Miscellaneous Provisions (Marriage) Act, 2017, reinforces the commitment to responsible marriage practices by establishing a minimum marriage age of eighteen (18) years. The key points of the law are as follows:

1. Members of the Muslim community are recognised as being legally capable of entering into marriage at the age of eighteen, promoting maturity and readiness for this important commitment.
2. A Marriage Officer is tasked with ensuring that marriages are solemnised only when both parties are eighteen years of age or older, thereby safeguarding the well-being of individuals and upholding legal standards.
3. In cases where a marriage is contracted by proxy, it is essential that both parties on whose behalf the proxy is acting meet the age requirement outlined in subsection (1), ensuring compliance and respect for the law.
4. Importantly, subsection (1) does not undermine the validity of marriages that were solemnised prior to the enactment of the Miscellaneous Provisions (Marriage) Act, 2017.

These marriages retain their validity as if the Act had not been introduced, ensuring fairness and continuity in the legal recognition of such unions. This framework is designed to uphold the integrity of marriage while protecting the rights of individuals within the community.

It is important to note that, in addition to civil marriages, the legal system in Trinidad and Tobago recognises religious marriages through the Muslim Marriage

[32]576 U.S. 644 (2015).
[33]Miscellaneous Provisions (Marriage) Act, Trinidad and Tobago 2017.

and Divorce Act,[34] the Hindu Marriage Act,[35] and the Orisa Marriage Act.[36] These acts recognise the authority of religious figures to officiate marriages in accordance with their respective traditions. For example, Section 6 of the Muslim Marriage and Divorce Act permits girls as young as twelve (12) and boys as young as sixteen (16) to marry, reflecting adherence to Islamic practices.[37]

However, the variance in marriageable age for civil and religious unions has raised significant legal concerns, particularly around child marriage. For example, in 2010, seventeen 13-year-old girls were legally married in Trinidad and Tobago[38]-highlighting the tensions between traditional practices and contemporary human rights standards.[39]

Although Trinidad and Tobago's pluralistic framework respects cultural diversity, there is growing pressure to reconcile these traditional allowances with evolving human rights expectations for child protection.[40] The differences in marriageable ages for civil and religious unions present an opportunity for thoughtful discussion and reform, particularly in relation to child marriage.[41]

Essentially, Trinidad and Tobago's multi-ethnic framework celebrates cultural diversity, and a constructive dialogue is underway aimed at harmonising these traditional allowances with evolving expectations for child protection.

In contrast, Guyana's matrimonial framework showcases a more cohesive approach through its Marriage Act.[42] This legislation effectively sets forth essential prerequisites, such as age requirements, consent provisions, and authorised solemnisation.[43] By establishing a standardised minimum age of eighteen (18) years, Guyana prioritises uniformity, which can enhance clarity and accessibility in the legal process, as opposed to the more pluralistic regime of Trinidad and Tobago.

The mandatory fifteen (15) day notification period serves as a valuable procedural safeguard, fostering genuine consent and reinforcing the commitment to marriage.[44] This thoughtfully structured approach not only ensures that individuals have a clear understanding of their decision but also strengthens their intention to enter into a lifelong partnership.[45]

It is imperative to state that Guyana's matrimonial law differs from Trinidad and Tobago's in that it adopts a unified structure for both civil and religious marriages. While religious weddings retain legal legitimacy, they must adhere to standardized standards similar to civil marriages,[46]including registration and conformity with national legislation, as established in *De Costa v De Costa*.[47]

[34]Muslim Marriage and Divorce Act, Ch 45:02.
[35]Hindu Marriage Act, Ch 45:03 Trinidad and Tobago of 1945.
[36]Orisa Marriage Act, Ch 45:04 Trinidad and Tobago 1999.
[37]Muslim Marriage and Divorce. Chap. 45:02.7 of 1961.
[38]Mendes-Franco (2017).
[39]Muslim Marriage and Divorce. Chap. 45:02.7 of 1961.
[40]Ibid.
[41]Miscellaneous Provisions (Marriage) Act, No. 8 of 2017.
[42]The Marriage Act 1989 (Act No 2 of 1989) (Guyana).
[43]Ibid.
[44]Miscellaneous Provisions (Marriage) Act, 2017 Trinidad and Tobago.
[45]Ibid.
[46]Ibid.
[47]*De Costa v De Costa* [1998] 1 SLLR 1 (Guyana).

The legislative integration of religious activities within a comprehensive framework underscores Guyana's dedication to ensuring legal consistency across its diverse populations.[48] Simultaneously, this approach permits cultural expression while establishing necessary boundaries, thus promoting both inclusivity and respect for individual beliefs.

Marriage Laws in the United States: Consent, Capacity, and Equality

Marriage in the United States is recognized as both a civil status and a contractual relationship. Each state sets its own requirements for the formation of a valid marriage, including minimum age, legal capacity, and the procedural requirements for licensing and solemnization. While most states establish the minimum legal age for marriage at eighteen (18), many allow exceptions for minors with parental consent or judicial approval. Recent legislative reforms in some states, however, reflect a growing movement to eliminate child marriage entirely.

Connecticut exemplifies this trend, having become one of the first states to prohibit marriage for individuals under the age of eighteen without exception when it enacted comprehensive reform in June 2023.[49] California, by contrast, maintains a more permissive approach, allowing marriage at any age with both parental and judicial consent, making it one of the few states with no statutory minimum age floor.[50]

In addition to regulating age and capacity, U.S. states uniformly recognize same-sex marriages, following the United States Supreme Court's decision in Obergefell v. Hodges mentioned previously. This landmark ruling held that the fundamental right to marry is guaranteed to same-sex couples under the Constitution, thereby invalidating state-level prohibitions on such unions. This development represents a significant departure from the legal frameworks in Trinidad and Tobago and Guyana, where same-sex marriage is either expressly prohibited or unrecognized under existing statutes. The U.S. legal system, therefore, offers an instructive example of how constitutional principles and evolving social norms can shape the institution of marriage in ways that differ markedly from jurisdictions rooted in the English common law tradition.

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[48]Ibid.

[49]Connecticut Public Act 23-44 (2023). The legislation was passed by the Connecticut General Assembly in June 2023 and signed into law by Lieutenant Governor Susan Bysiewicz on June 23, 2023, taking effect July 1, 2023.

[50]Cal. Fam. Code §§ 301-302 (establishing 18 as general marriage age but allowing minors to marry with both parental consent and court approval, with no statutory minimum age floor).

Divorce Laws in TT and Guyana

In Trinidad and Tobago, Section 3 of the Matrimonial Proceedings and Property Act (MPPA)[51] establishes 'irretrievable breakdown' as the core basis for divorce. This concept, as defined in Section 4 (1), includes grounds such as adultery, unreasonable behaviour, two (2) years of desertion, and prolonged separation, with or without consent.

The prominent case of *Jamieson v Jamieson*[52] reveals the standard for cruelty, which requires the cumulative effect of oppressive behaviour causing harm to a spouse, rather than focusing on individual incidents.[53] The divorce process in Trinidad and Tobago involves two stages: first, a decree nisi and then a decree absolute.[54] This framework aims to maintain marital stability by providing an opportunity for possible reconciliation before finalising the dissolution of marriage.[55]

Section 9 (1) (d) of Guyana's Matrimonial Causes Act (MCA)[56]permits divorce on the grounds of 'irreconcilable differences,' reflecting a more progressive, no-fault approach.

Similar to Trinidad and Tobago, the MCA also recognises adultery and cruelty as valid grounds for divorce, which are rooted in English common law. In the case of *Ramsingh v Ramsingh*,[57] the court determined that extended separation satisfied the statutory requirement for irretrievable breakdown, supporting the idea that marriage should be ended without attributing fault when unity is no longer possible.[58]

This framework allows for divorce by mutual consent after six (6) months or by unilateral consent after five (5) years, highlighting Guyana's forward-thinking perspective on minimising marital conflict.[59] Overall, while both jurisdictions acknowledge the significance of irretrievable breakdown as the basis for divorce.[60] This difference underscores varying views on the delicate balance between maintaining marital stability and respecting individual autonomy.

Evaluating Divorce Laws: Religious Perception and Fault Systems

Trinidad and Tobago's family law framework effectively reflects the nation's rich cultural diversity by accommodating various religious divorce practices through specialised legislation. This includes the Muslim Marriage and Divorce Act, the Hindu Marriage Act, the Orisa Marriage Act, and the Maintenance and Property of Property Act (MPPA). Each of these laws is thoughtfully tailored to address the unique needs of specific communities.

[51]Matrimonial Proceedings and Property Act 1972, Ch 45:51, Section 4 (Trinidad and Tobago).
[52]*Jamieson v Jamieson* [1952] AC 525, 534.
[53]Ibid.
[54]Westmin.
[55]Ibid.
[56]Matrimonial Causes Act (Guyana) Cap 45:02 (Amendment) 2024, s. 9 (1) (d).
[57]*Ramsingh v Ramsingh* [2003] GLR 25.
[58]Ibid.
[59]Ibid.
[60]Matrimonial Causes Act (Guyana) Cap 45:02 (Amendment) 2024, s. 9 (1) (d).

For example, the unilateral 'talaq' divorce recognised in the Muslim Marriage Act is affirmed in the case of *Rafigue v Rafigue,*[61] revealing the legal protections available to Muslim couples seeking to dissolve their marriages.[62] Meanwhile, Hindu and Orisa marriages lack formalised divorce procedures, prompting courts to rely on cultural customs and equitable principles, resulting in diverse outcomes that illustrate the pluralistic nature of Trinidad's legal system

In contrast, Guyana's Matrimonial Causes Act (MCA) adopts a more secular approach that is uniformly applied to all citizens, prioritising consistency in divorce proceedings. While this streamlined application aims to simplify the divorce process, it also presents an opportunity to better integrate community-specific cultural and religious values, ensuring that no group feels marginalised.

For instance, prior to the Matrimonial Causes (Amendment) Bill 2024-reforms, Guyana was the only Anglo-Caribbean state with a pure fault/matrimonial offences system for divorce. Guyana has maintained almost all the fault-based grounds for divorce and added a new ground, 'irreconcilable differences which have caused the irretrievable breakdown of the marriage.' This is different to Trinidad and Tobago, which modelled the UK MCA 1973, in which fault represented facts which could establish the irretrievable breakdown.

To reiterate, Guyana created in 2024 a new mixed system, divorce based entirely on fault grounds and divorce based on a no-fault ground. Both are possible, depending on the petitioner's choices.[63] As seen in Belize, courts struggle to determine what this means in terms of applying bars to divorce. In the past, Guyana's MCA promoted a no-fault approach, allowing divorce based on irretrievable breakdown, as demonstrated in *Ramsingh v Ramsingh.*[64] However, due to the introduction of the divorce reforms in 2024, this no longer stands.

Snapshot of the Legal Status of Engagement in TT and Guyana

It is imperative to state that for an engagement to be deemed as a valid contract, it must consist of the following: Offer, Acceptance, and Consideration, as indicated in the famous case of *Harvey v Johnston*[65] and Capacity to marry- parties must be single, as exemplified in *Spiers v Hunt*, where an action for breach of promise to marry failed as the promise was made by a married man to induce a woman to commit adultery with him. Though there was a promise to marry upon the death of the man's wife, this promise was contrary to public policy; thus, the contract was void.[66]

While engagements are recognised under common law as mutual promises to marry, jurisdictions like Trinidad and Tobago and Guyana treat these commitments more as social than legally binding obligations.[67] In the Commonwealth Caribbean, engagements typically lack statutory regulation, reflecting a broader view that

[61]*Rafigue v Rafigue,* TT 1966 CA 132; (1966–1969) 9 T&TLR 184.
[62]Ibid.
[63]Matrimonial Causes Act (Guyana) Cap 45:02 (Amendment) 2024, section. 9 (1) (d).
[64]*Ramsingh v. Ramsingh* [2003] GLR 25.
[65][1848] 136 ER 1265.
[66][I908] I K.B. 721.
[67]Barratt, Domingo, Amien, Denson & Mahler-Coetzss (2017) at 227.

private social agreements should avoid rigid legal enforcement. However, courts in Trinidad and Tobago and Guyana have occasionally treated engagements as enforceable under common law, especially when one party incurs significant financial or emotional harm upon a breach of promise.

In Trinidad and Tobago, courts may provide remedies for engagement breaches, particularly if one party has incurred losses. A famous case of a Twenty-Five (25) year old woman who was preparing to be engaged to her Twenty-Seven (27) year, boyfriend-Nicholas Taransingh of Penal, was jilted on the day of the engagement party. The jilted woman from central Trinidad spent about $30,000 on the function and invited about a hundred (100) people.

It was reported that she suffered "severe embarrassment, hurt, mental trauma and suffered loss and expenses and anguish resulting in her cutting her wrist."[68] 'Her San Fernando attorneys Stephen Boodram and Jeevan Rampersad also sought damages for their client for mental distress, humiliation and personal injury as the Penal man had no valid reason for his absence at the planned engagement party.'[69]

The case is a novel lawsuit for breach of promise to marry in TT, the last of which was adjudicated upon in the High Court in 1978, in which retired judge Monica Barnes delivered a ruling, which has evoked an outpouring of support for the former would-be bride on social media.

In *rost v Knight,*[70] the principle was established that anticipatory repudiation of an engagement could lead to damages, treating such commitments as binding social obligations. This stance aligns with the Trinidadian judiciary's approach to enforcing personal accountability in engagements. Guyana, similarly, offers legal recourse in cases involving substantial financial impact, as demonstrated in *Persaud v Persaud.*[71]

However, the Guyana courts generally offer fewer remedies, focusing primarily on financial compensation,[72] which reflects a less interventionist approach compared to Trinidad and Tobago. This variation illustrates the nuanced balance each jurisdiction strikes between social expectation and legal accountability.

Similarly, Guyana offers legal recourse in cases that involve a significant financial impact, as shown in the case of *Persaud v Persaud.*[73] However, the Guyanese courts generally provide fewer remedies, primarily focusing on financial compensation. This reflects a less interventionist approach compared to Trinidad and Tobago. This variation highlights the nuanced balance that each jurisdiction strikes between social expectations and legal accountability.

Trinidad and Tobago courts take a broader approach in line with English law regarding claims for breach of engagement. They award damages for both financial and emotional losses, as illustrated in the case of *Frost v. Knight.*[74] This reflects an understanding of the emotional significance tied to engagements.

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[68]Braxton (2017).
[69]Ibid.
[70]*Frost v Knight* (1872) LR 7 Exch 111.
[71]*Persaud v Persaud* [1985] GLR 230.
[72]Ibid.
[73]*Persaud v Persaud* [1985] GLR 230.
[74]*Frost v Knight* (1872) LR 7 Exch 111.

In contrast, the judiciary in Guyana, as shown in *Persaud v. Persaud,*[75] limits damages to financial losses only. They view engagements as private arrangements with no legal enforcement for emotional distress. This difference emphasises Trinidad and Tobago's considerable judicial discretion in personal matters, while Guyana's more restrictive approach assigns less legal weight to engagements.[76]

Key Elements Required for a Valid Marriage

Marriage is defined as 'the voluntary union for life of one man and one woman to the exclusion of all others,'[77] In Trinidad and Tobago (TT), the legal framework governing marriage includes several key pieces of legislation: the Trinidad and Tobago Marriage Act,[78] the Matrimonial Proceedings and Property Act, the Muslim Marriage and Divorce Act, the Hindu Marriage Act, and the Orisa Marriage Act.[79]

In Guyana, the relevant laws regulating marriage is the Matrimonial Causes Act (Guyana) Cap 45:02 (Amendment). Understanding these legal provisions is essential for individuals navigating the institution of marriage in both countries.[80]

In both jurisdictions, parties must meet the minimum age requirement to legally enter into a valid marriage.[81] However, there is an exception allowing for consent to be given for those below the minimum age.[82] In Trinidad and Tobago, consent is required for individuals under eighteen years of age,[83] whereas in Guyana, this applies to those under sixteen (16).[84] Guyana maintains a consistent order of priority for consent in religious marriages,[85] providing a clear framework for such unions. In contrast, Trinidad and Tobago (TT) presents variations in this order, reflecting its unique cultural dynamics. For instance, in Hindu and Muslim marriages within TT, the father is accorded primary authority for consent. In contrast, Christian marriages follow a different structure that involves both the individuals and their families.[86]

The statutory law governing marriage and divorce in Trinidad and Tobago is unique, comprising four acts: the Marriage Act (governs both the Christian and civil marriages), the Muslim Marriage and Divorce Act,[87] the Hindu Marriage Act,[88] and the Orisa Marriage Act.[89] This distinction highlights TT's thoughtful integration of religious customs within its legal framework.

Additionally, the prominent patriarchal structures inherent in Islamic traditions are acknowledged, enabling TT to adapt effectively to its diverse socio-cultural

[75]Ibid.
[76]*Persaud v Persaud* [1985] GLR 230.
[77](1866) LR 1P&D 130 at 133.
[78]1923 Chap 45.01
[79]Orisa Marriage Act, Ch 45:04 (Trinidad and Tobago).
[80]Matrimonial Causes Act (Guyana) Cap 45:02 (Amendment) 2024.
[81]Ibid.
[82]Miscellaneous Provisions (Marriage) TT Act 2017.
[83]Ibid.
[84]Marriage Act 1901, s 31 (Guyana).
[85]Marriage Act 1901, s.32 (Guyana).
[86]U.S. Embassy Trinidad &Tobago: Getting Married in Trinidad and Tobago (2016).
[87]Muslim Marriage and Divorce Act 1961.
[88]Hindu Marriage Act 1957.
[89]Orisa Marriage Act, Ch 45:04 (Trinidad and Tobago).

environment. Marriage officers may waive the requirement for consent[90] in certain situations, such as when the authorised person is mentally incapacitated. In Guyana, there is a specific provision for minors;[91] a girl under sixteen (16) who is pregnant or a boy who acknowledges fatherhood may apply to the Court for permission to marry.[92] This pragmatic approach aims to provide legal recognition and support for young families. However, it could inadvertently encourage the health risks associated with child marriage.[93] In contrast, Trinidad and Tobago adopts a more protective stance by excluding this provision.

Prohibited Degrees of Relationship

In both jurisdictions, there are important statutory provisions that invalidate marriages between individuals who are related by blood (consanguinity).[94] These regulations not only promote public safety by helping to minimise the risk of genetic disorders associated with unions[95] between close relatives but also underscore the importance of responsible family planning.

Additionally, laws regarding affinity relationships established through marriage also play a significant role. In Guyana, there is a comprehensive prohibition against marriages between most in-laws,[96] whether the spouse is alive or deceased, except for allowing a marriage with a deceased spouse's sibling. This framework aims to uphold family integrity.

Conversely, Trinidad and Tobago offer a more flexible approach,[97] permitting marriages with a broader range of in-laws, regardless of the former spouse's status.[98] This variation reflects the unique cultural perspectives within each jurisdiction and fosters an understanding of diverse familial relationships.[99]

A. Non-Marital Unions

Both Trinidad and Tobago (TT) and Guyana have made significant strides in recognising non-marital unions, acknowledging the evolving social landscape. This legal recognition, as illustrated by case law,[100] is a positive step towards ensuring that individuals in these partnerships, referred to as 'statutory spouses,[101] can access essential benefits. By adapting to these social realities, the legal framework promotes inclusivity and support for diverse family structures.[102]

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[90]Marriage Act, s.24 (TT).
[91]Marriage Act, 1901, section.32 (2) (Guyana).
[92]Ibid.
[93]Fan & Koski (2022) at 330.
[94]Marriage Act, section.29, 30 (Guyana) 19.
[95]Temaj, Nuhil & Sayer (2022) at 1.
[96]Marriage Act, ss.29, 30 (Guyana) 1901.
[97]Section 36(2) (TT) Miscellaneous Provisions (Marriage) Act, No. 8 of 2017.
[98]Schafer (2008) at 67.
[99]Marriage Act, s.36 (2) (TT).
[100][2013] HC 7.
[101]Ibid.
[102] Ibid.

B. Eligibility Criteria

Conversely, Guyana's criteria for eligibility focus primarily on the length of cohabitation.[103] While this approach may provide clarity, it might inadvertently exclude relationships that have not yet reached the five (5) year milestone, particularly those with children, ultimately restricting the inclusivity of their legal framework.[104] By examining these different approaches, both countries can find ways to enhance their systems to better serve varied family dynamics.[105]

C. Marital Status

Guyana requires that both parties be single during the cohabitation period in order to be recognised as 'statutory spouses.[106] In contrast, Trinidad and Tobago (TT) does not have this requirement, allowing for a broader array of unions "cohabitational relationship" means the relationship between cohabitants, who are not married to each other, are living or have lived together as husband and wife on a bona fide domestic basis;).[107] This difference means that TT's legal framework is more inclusive than that of Guyana.

The Barbadian case of *Kinch v. Clarke,*[108] where an unmarried woman who lived with a man for fifteen years was unable to inherit his estate because he was legally married to someone else, was overruled by the Caribbean Court of Justice (CCJ) in the case of *Selby v Smith,*[109] and the decision binds Guyana, because the CCJ is also its apex court, highlighting this rigidity in Guyana's laws.[110] Thus, TT's approach offers greater inclusivity by not imposing a requirement for both parties to be single.

D. Nullity of Marriage

Guyana's legislation and common law focus exclusively on void marriages, which are deemed invalid from the start. On the other hand, Trinidad and Tobago's (TT) legal framework provides for both void and voidable marriages[111] effectively addressing a wider range of marital circumstances. For instance, it allows for considerations such as non-consummation of marriage due to incapacity. This contrast suggests that while Guyana's approach is straightforward and clear-cut, there may be opportunities to enhance its legal framework by incorporating elements that accommodate more complex marital issues, similar to those in TT.

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[103]Section 15(9) of the Married Persons' (Property) Act; CAP 45:04.
[104]Ibid.
[105]Ibid.
[106]Married Persons (Property) Act, Cap 45:04.
[107]Section 2, Cohabitational Relationships Act, Chpt 4:20 1998, TT.
[108][1985] HC 17.
[109][2017] CCJ 13 (AJ).
[110]Ibid.
[111]Matrimonial Proceedings and Property Act 1972, s.13(1), 13(2) (TT) .

E. Divorce Models

Both Trinidad and Tobago (TT) and Guyana adopts a Mixed Fact model, which offers a more flexible approach by allowing divorce based solely on the irretrievable breakdown of the marriage.[112] This model effectively combines both fault-based and no-fault grounds,[113] providing options for couples in different circumstances.

Additionally, TT requires that a marriage last for at least one year before an application for divorce can be filed.[114] On the other hand, Guyana's approach is more accommodating, as it has no minimum duration requirement for marriage before a divorce application can be made.[115] Another example of the Guyanese court accommodating approach was highlighted in the Guyanese case of *Seweda v Seweda* Civil Appeal 39 of 2012; the court indicated that there is no point in assessing what every penny that came into a marriage was spent on and by whom.[116] This flexibility may benefit individuals seeking to navigate the divorce process in various situations.

In Guyana, the absence of a resumption of cohabitation provision encourages a thoughtful approach to the divorce process.[117] While couples may worry that living together again could affect their divorce grounds, this situation also opens up opportunities for open communication and reflection on their relationship.

In contrast, Trinidad and Tobago (TT) provides the option for couples to resume cohabitation for a limited time without impacting their divorce proceedings.[118] This flexibility can facilitate meaningful conversations and potential reconciliation.[119] Moreover, TT actively encourages attorneys to promote reconciliation between spouses seeking divorce, highlighting a constructive role for legal professionals in the process. By considering the unique laws and practices in both regions, couples can explore ways to navigate their situations more effectively, whether through reconciliation efforts or understanding their legal rights and options.

Essentially, the TT model offers a constructive and adaptable approach to divorce, focusing on the concept of irretrievable breakdown while promoting supportive reconciliation provisions. This framework encourages a less confrontational process, facilitating better outcomes for all parties involved.

The Rise and Impact of No-Fault Divorce in the United States

The introduction and widespread adoption of no-fault divorce in the United States marked a transformative shift in family law. Prior to 1969, most jurisdictions required parties to prove marital misconduct, such as adultery, cruelty, or

[112] Nunez-Tesheira (2016) at 35.
[113] Section 5(1) of the Matrimonial Proceedings and Property Act, Chap 45:51, 1970.
[114] Ibid.
[115] Matrimonial Causes Act (Guyana) Cap 45:02 (Amendment) 2024.
[116] Kyte-Thomas, Property Rights in Guyana and You-Part 1.
[117] Section 15(9) of the Married Persons' (Property) Act; CAP 45:04. 1990.
[118] Section 2, Cohabitational Relationships Act Chpt 4:20 1998, TT.
[119] Ibid.

abandonment, in order to dissolve a marriage. This adversarial approach often encouraged perjury, deepened conflict, and disproportionately burdened economically dependent spouses who lacked access to private investigators or legal representation.[120]

California became the first state to enact a no-fault divorce statute with the passage of the Family Law Act of 1969.[121] Under this law, a party could seek dissolution of marriage on the ground of 'irreconcilable differences,' removing the need to assign blame or prove fault. This reform has since been adopted in all fifty states.

While some states retain fault-based grounds as optional alternatives, Connecticut, being a prime example, every jurisdiction now allows couples to divorce without proving wrongdoing. This evolution represents a substantial shift from the fault-based systems still partially preserved in countries such as Guyana, which only recently adopted a mixed model allowing both fault and no-fault grounds.

No-fault divorce has had a profound impact on legal systems, social policy, and public health in the United States. It has facilitated greater autonomy, especially for women seeking to exit dysfunctional or abusive relationships, and has helped reduce the adversarial nature of divorce proceedings.[122] However, it has also raised concerns regarding economic fairness and support for vulnerable spouses, prompting ongoing reforms related to spousal maintenance, equitable division, and procedural safeguards.[123]

The U.S. experience with no-fault divorce provides a compelling contrast to the Caribbean jurisdictions analysed in this paper. It illustrates how legal reform, grounded in the principles of autonomy and dignity, has reshaped both legal process and cultural understanding of marriage and its dissolution.

Property Division: Contrasting Models of Marital Equity

The laws applying to the division of property upon divorce is one of the most significant distinctions between U.S. jurisdictions. California adheres to the community property system, under which generally all income and assets acquired during the marriage are presumed to be jointly owned (i.e. community property) and are divided equally upon dissolution. Separate property, such as assets owned before marriage or acquired by gift or inheritance, remains the property of the original owner, provided it is not commingled.[124]

In contrast, Connecticut follows the equitable distribution model. Here, all property, regardless of how or when it was acquired, may be subject to division. The court considers a range of factors, including the length of the marriage, the causes of the breakdown, each spouse's contributions, and future earning capacity. The goal

[120]See generally Rheinstein (1972); Kay (1987) at 8-12.
[121]Cal. Family Law Act of 1969, effective Jan. 1, 1970 (establishing California as the first state to adopt no-fault divorce.
[122]Stevenson & Wolfers (2006).
[123]England & Farkas (1986); Bianchi, Subaiya & Kahn (1999).
[124]Cal. Fam. Code §§ 760, 770, 2550 (establishing community property presumption for assets acquired during marriage, separate property status for premarital assets and gifts/inheritances, and equal division requirement upon dissolution).

is not necessarily equal division, but rather a division that is fair under the circumstances.[125]

This divergence in property systems illustrates broader philosophical differences between jurisdictions. California prioritises formal equality, while Connecticut emphasises individualised justice. These approaches provide a useful contrast to the Caribbean jurisdictions studied in this paper, particularly Guyana's evolving stance and Trinidad and Tobago's religiously pluralistic regime.

Cohabitation and Non-Marital Relationships

As social norms shift, cohabitation has become increasingly common in the United States.[126] However, legal protections for cohabiting couples vary widely. Neither California nor Connecticut recognises common law marriage, except under very limited conditions, such as when a couple validly formed such a union in another state that recognises it.[127]

While cohabiting partners may enter into private agreements regarding property or financial support, courts are generally hesitant to impose marital obligations absent formal legal status. That said, courts in both states may consider equitable claims—such as constructive trusts or unjust enrichment—if one party has made substantial contributions to shared assets or has provided substantial financial support to the other.[128]

These legal limitations highlight the continued privileging of formal marriage as the gateway to legal rights in the U.S. Unlike Trinidad and Tobago's statutory spouse framework or Guyana's more limited cohabitation protections based on duration, U.S. courts place a greater burden on non-marital partners to affirmatively protect their interests through private contracting.

Conclusion

This paper has been able to establish that the legal systems in Trinidad and Tobago and Guyana offer unique approaches to engagements and divorce, shaped by cultural and religious influences. Both regions view engagements primarily as social practices, however, Trinidad and Tobago consider cultural contexts,

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[125]Connecticut. General. Statutes. § 46b-81 (requiring courts to consider multiple factors including length of marriage, age, health, income, and contributions of each spouse in making "equitable" but not necessarily "equal" distribution of all property, regardless of how or when acquired).
[126]See Horowitz, Graf & Livingston (2019); U.S. Census Bureau (2019)., *Cohabiting Partners Older, More Racially Diverse, More Educated, Higher Earners* (2019) (reporting number of unmarried partners nearly tripled from 6 million to 17 million over two decades).
[127]Neither California nor Connecticut recognizes common law marriage within their borders. Cal. Fam. Code § 300; Conn. Gen. Assembly Office of Legislative Research, Report No. 2013-R-0264 (2013). Both states will, however, recognize common law marriages validly formed in other jurisdictions. See *Delaney v. Delaney* (applying rule that marriages valid where contracted are valid everywhere unless contrary to strong public policy).
[128] See *Marvin v. Marvin*, 18 Cal. 3d 660, 684 (1976) (both jurisdictions recognizing equitable remedies such as constructive trusts and unjust enrichment claims for unmarried cohabitants who have made substantial contributions to shared assets).

especially in religious communities, while Guyana follows a uniform, secular stance.

The U.S. legal system reflects a strong emphasis on individual autonomy, procedural justice, and constitutional equality. It has embraced reforms in areas such as no-fault divorce and same-sex marriage that have reshaped the legal definition of family. At the same time, its decentralised structure results in significant variability, which can affect access to justice depending on one's location.

California and Connecticut represent instructive case studies. California offers predictability through strict community property rules and streamlined no-fault divorce, while Connecticut's equitable approach provides flexibility and contextual sensitivity. Both systems aim to balance respect for personal choice with the need to ensure fairness at the point of marital dissolution.

These approaches contrast with the post-colonial legal trajectories of Trinidad and Tobago and Guyana. While all systems are rooted in English common law, the U.S. has evolved to centre constitutional rights and individualised justice in ways that may offer useful insights for Caribbean jurisdictions navigating the balance between tradition, reform, and pluralism.

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