

Separate Property – "his and hers; not ours"

1. INTRODUCTION	1
Scope of booklet	2
2. SECTION 9 - WHAT IS SEPARATE PROPERTY?	3
Section 9	3
<i>Section 9(1)</i>	3
Section 9(2)	4
Section 9(3)	6
<i>Section 9(4)</i>	7
<i>Section 9(5)</i>	7
<i>Section 9(6)</i>	8
3. BLURRING THE BOUNDARIES – BECOMING MATRIMONIAL PROPERTY	10
Section 9(3)	10
<i>Introduction</i>	10
<i>What is "increase in value"?</i>	10
<i>What are "income or gains"?</i>	11
<i>"Remain separate property unless ..."</i>	11
<i>"Wholly or in part"</i>	11
<i>Date from which increase or gains is measured</i>	12
<i>Actions of the other spouse</i>	12
<i>Application of matrimonial property</i>	13
<i>The increase in value shall be matrimonial property</i>	14
<i>Provisions which may be relevant to similar facts</i>	14
<i>Relationship between s 9(3) and s 10(1)</i>	15
<i>Reform of s 9(3)</i>	15
Section 17	16
<i>Elements of s 17</i>	16
<i>Meaning of "sustained"</i>	16
<i>Exercise of discretion</i>	17
<i>Section 17(2) – "Materially diminished in value"</i>	18
<i>"By the deliberate action of the other spouse"</i>	19
<i>"May be diminished to such an extent as the court thinks just"</i>	19
Intermingling	20
<i>Section 10(1)</i>	20
Section 10(2)	22
Section 10(3)	22
4. TWO HOMES AVAILABLE	23
Section 16 – Adjustments may be made when each spouse owns a home at the	23

date of the marriage	
<i>Two homes owned at date of marriage</i>	23
"Owned" a home	23
<i>A home capable of becoming a matrimonial home</i>	24
<i>Included in the matrimonial property at the time when the matrimonial property falls to be divided</i>	25
<i>Situation of the home to be considered under s 16</i>	26
<i>Does s 16 apply to a homestead?</i>	26
<i>Where two homes are owned at the date of marriage, what will prevent the application of s 16 at separation?</i>	26
<i>Discretion as to the value of the adjustment</i>	27
<i>Matrimonial Property Amendment Bill</i>	28
5. SECTION 19 - DEALING WITH PROPERTY	29
6. SECTION 20 - DEBTS: SEPARATE OR MATRIMONIAL?	31
Section 20(1)	31
Section 20(2)	32
Section 20(3)	33
Section 20(4)	34
Section 20(5),(6),(7)&(8)	34
Matrimonial Property Amendment Bill	36
7. REFORM	39
APPENDIX A - MATRIMONIAL PROPERTY AMENDMENT BILL	41