

Barbados Jurisprudence

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Overview

- Introduction
- Brief History
- Structure of Court System
- Legal Aid
- Alternate Dispute Resolution
- Education System
- Case Study



Introduction

Barbados is a West Indian continental island-nation in the western Atlantic Ocean.

Barbados functions as a constitutional monarchy and parliamentary democracy, modeled on the British Westminster system, with Elizabeth II, Queen of Barbados, as head of state represented locally by the Governor-General, Clifford Husbands and the Prime Minister as the head of the government.



History

- After a brief claim by Spain in 1492 and later Portugal, Barbados became a colony of the United Kingdom for over three centuries, gaining independence in 1966.
- Historically, Barbadian law was based entirely on English common law with a few local adaptations.
- At the time of independence, the British Parliament ceased having the ability to change local legislation at its own discretion. British law and various legal statutes and other prior measures adopted by the Barbadian parliament became the basis of the modern-day law system.



History (con't.)

- More recently however, local Barbadian legislation may be shaped or influenced by such organizations as the United Nations, the Organization of American States, or other International fora which Barbados has obligatory commitments by treaty.
- Additionally, through international cooperation, other institutions may supply the Barbados parliament with key sample legislation to be adapted to meet local circumstance, before crafting it as local law.
- Laws are passed by the Barbadian Parliament, whereby upon their passage, are given official vice-regal assent by the Governor-General to become law.



Barbados Parliament Building

History (con't.)

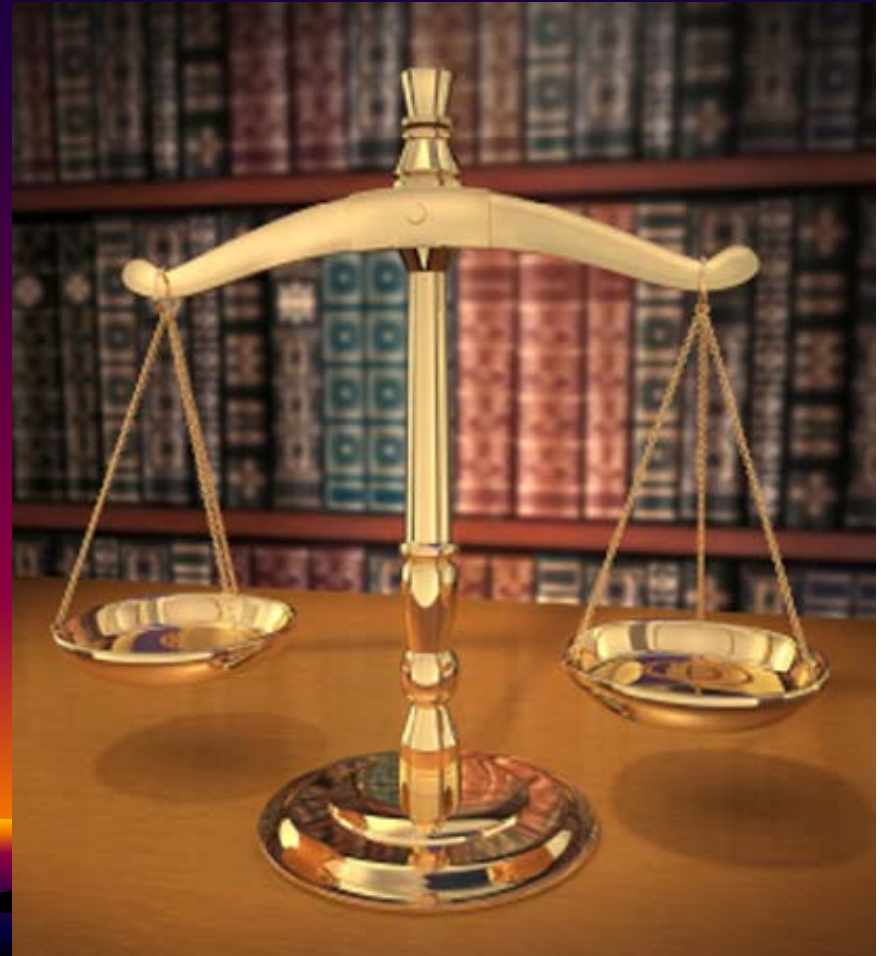
- **United States – Barbadian Relations**

- The U.S. Government has been represented in Barbados since 1824.
- From 1956 to 1978, the U.S. operated a naval facility in Barbados.
- The U.S. and Barbados have had friendly bilateral relations since Barbados' independence in 1966.
- The U.S. supported the government's efforts to expand the country's economic base and to provide a higher standard of living for its citizens.
- Barbados is a beneficiary of the U.S. Caribbean Basin Initiative.



Court System

- Judicial Branch
- Office of Attorney General
- Office of the Director of Public Prosecutions
- Police

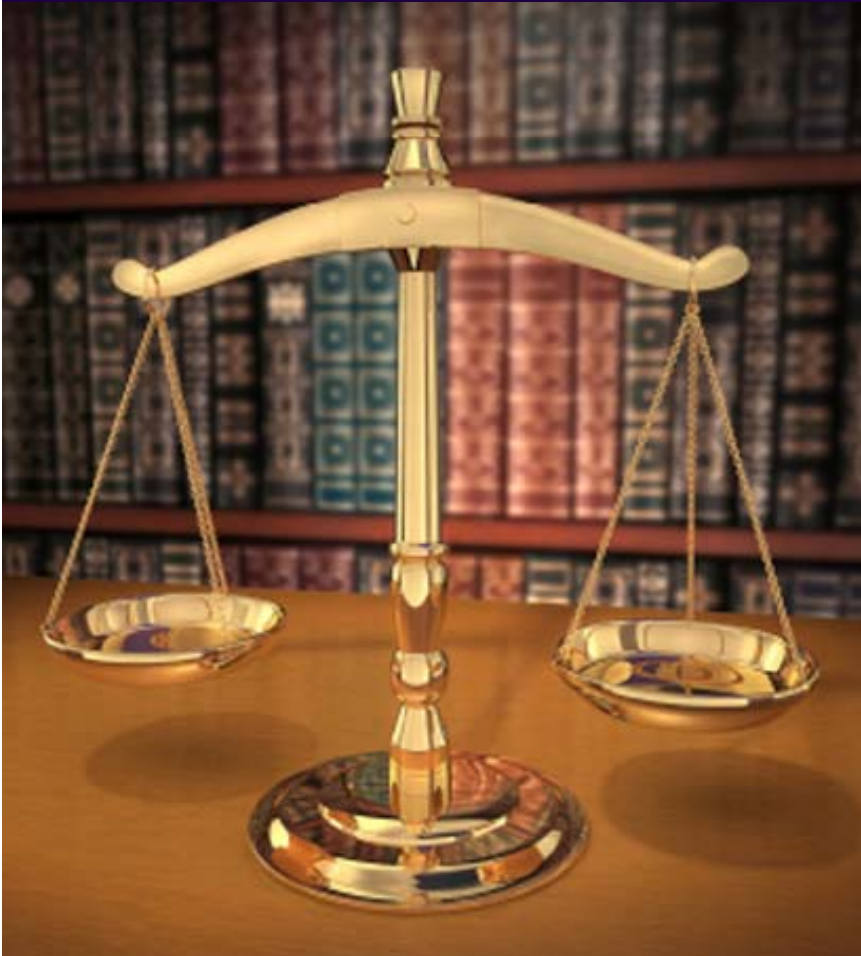


Court System

- Judicial Branch

The Judicial Branch is comprised of the Supreme Judicature

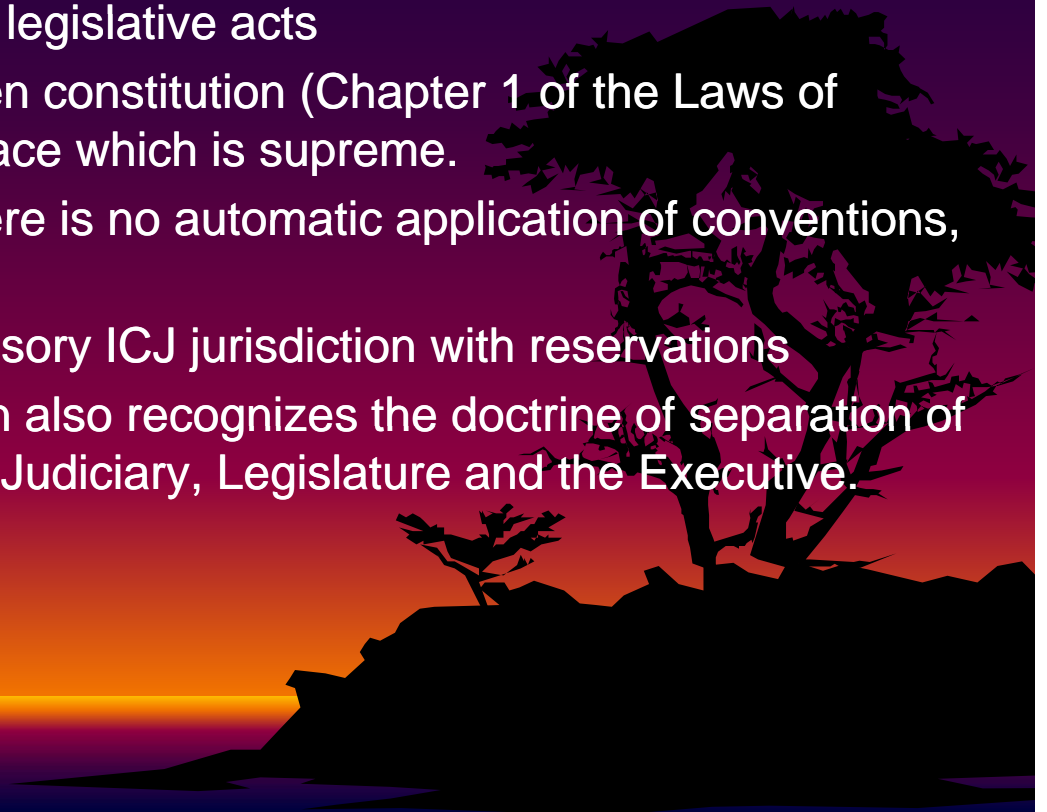
Judges are appointed by the Service Commissions for the Judicial and Legal Services and are independent of the executive and legislative functions of the Government itself.



Court System (con't.)

- Judicial Branch

- The courts administer the laws of Barbados, which consist solely of local legislation.
- No judicial review of legislative acts
 - There is a written constitution (Chapter 1 of the Laws of Barbados) in place which is supreme.
 - Accordingly, there is no automatic application of conventions, treaties, etc.
 - Accepts compulsory ICJ jurisdiction with reservations
 - The Constitution also recognizes the doctrine of separation of powers into the Judiciary, Legislature and the Executive.



Court System (con't.)

- Office of Attorney General

Appointed by the
Governor General

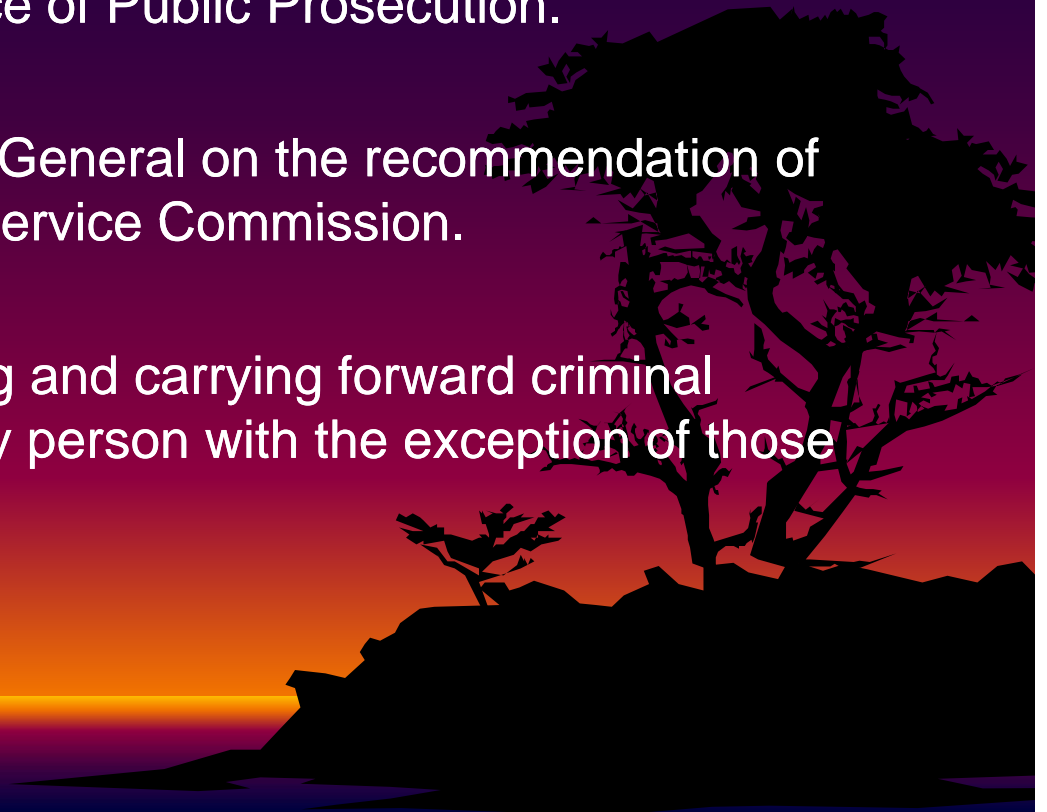
+ Approval of the
Prime Minister

= Attorney General

- Provide legal counsel to government agencies and ministries in civil matters including reforms and reviews of laws.
- Also responsible for reporting to parliament and the cabinet.
- Leads the National Crime Prevention Commission

Court System (con't.)

- Director of Public Prosecutions
 - Article 79 of Barbados Constitution established the creation and mandate of an Office of Public Prosecution.
 - Appointed by Governor General on the recommendation of the Judicial and Legal Service Commission.
 - Responsible for initiating and carrying forward criminal proceedings against any person with the exception of those under martial courts.



Court System Initiatives

- In 2005, the Barbadian government implemented a national strategic plan that included special objectives in these areas:
 - ✓ increasing overall efficiency
 - ✓ reducing crime
 - ✓ and implementing a criminal justice reform aimed at developing effective tools for fighting crime.



Structure of Judicial System

- Magistrate Court
- Supreme Court
- Caribbean Court of Justice



Structure of Court System (con't)

Magistrate Court

- Covers Criminal, Civil, Domestic, Family and Juvenile Matters.
- Also includes Contract and Tort law where claims don't exceed \$10,000.
- Limited Jurisdiction

Supreme Court

- Made up of High Court and Court of Appeals.
- Handles appeals from both High Court and Magistrates Court.
- Unlimited Jurisdiction of both Civil and Criminal Appeals.

Caribbean Court of Justice

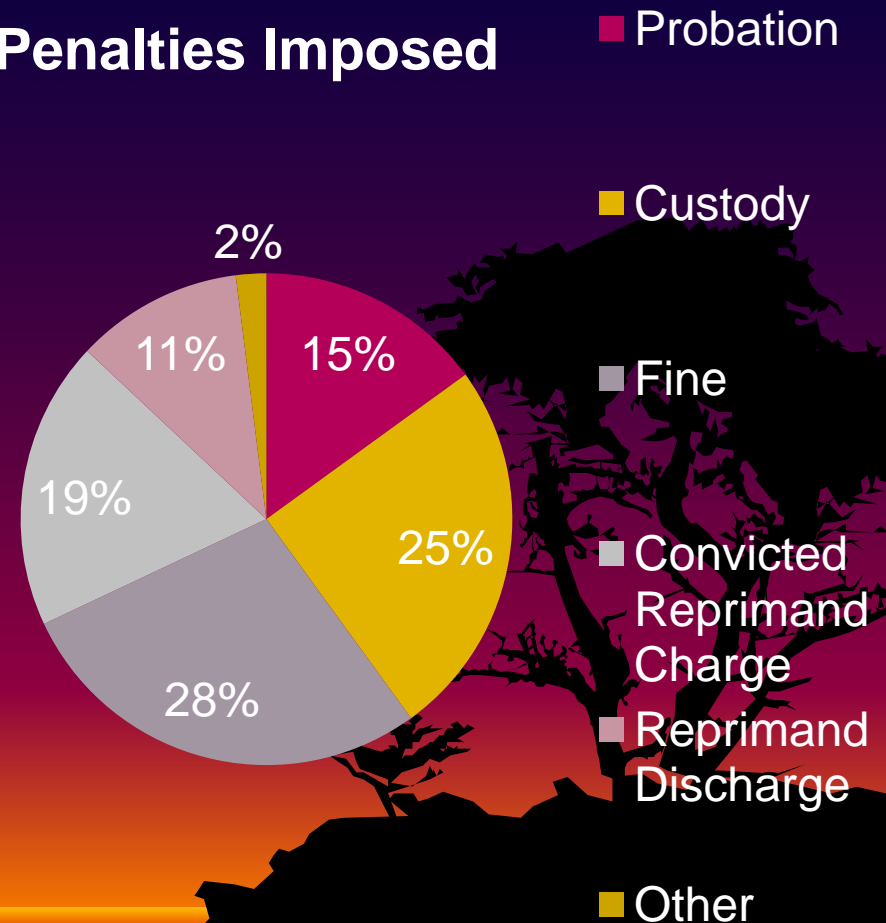
- (CCJ) based in Trinidad & Tobago is the court of last resort over Barbadian Law.
- Also resolves other dispute matters dealing with the Caribbean Community Single Market Economy.

Court System

Magistrate Court

- Court deals with the great majority of criminal cases in Barbados.
- Can sentence up to 5 years.
- Provide Barbadians with daily messages about the nature of criminal justice in Barbados.

Penalties Imposed



Court System (con't)

Supreme Court

- **Consists of High Court and Court of Appeals**

Mission Statement:

- To ensure that the administration of justice functions speedily, efficiently and effectively and provides reasonable access to justice for all persons irrespective of their means.
- To ensure that the island's most vital occurrences are recorded.
- To provide social and essential services to the entire population as required by the Laws of Barbados.





- The Caribbean Court of Justice (CCJ) is the regional judicial tribunal established on February 14, 2001 by the Agreement Establishing the Caribbean Court of Justice.
- The agreement was signed on that date by the Caribbean Community (Caricom) states of: Antigua & Barbuda; Barbados; Belize; Grenada; Guyana; Jamaica; St. Kitts & Nevis; St. Lucia; Suriname and Trinidad & Tobago. Two further states, Dominica and St. Vincent & The Grenadines, signed the agreement on February 15, 2003, bringing the total number of signatories to 12.
- The CCJ was inaugurated on April 16, 2005 in Port of Spain, Trinidad & Tobago.



(con't)

- The Caribbean Court of Justice is designed to be more than a court of last resort for member states of the Caribbean Community.
- In addition to replacing the Judicial Committee of the Privy Council, the CCJ is vested with an original jurisdiction in respect of the interpretation and application of the Treaty Establishing the Caribbean Community.
- In effect, the CCJ is designed to exercise both an appellate and an original jurisdiction.



Legal Aid



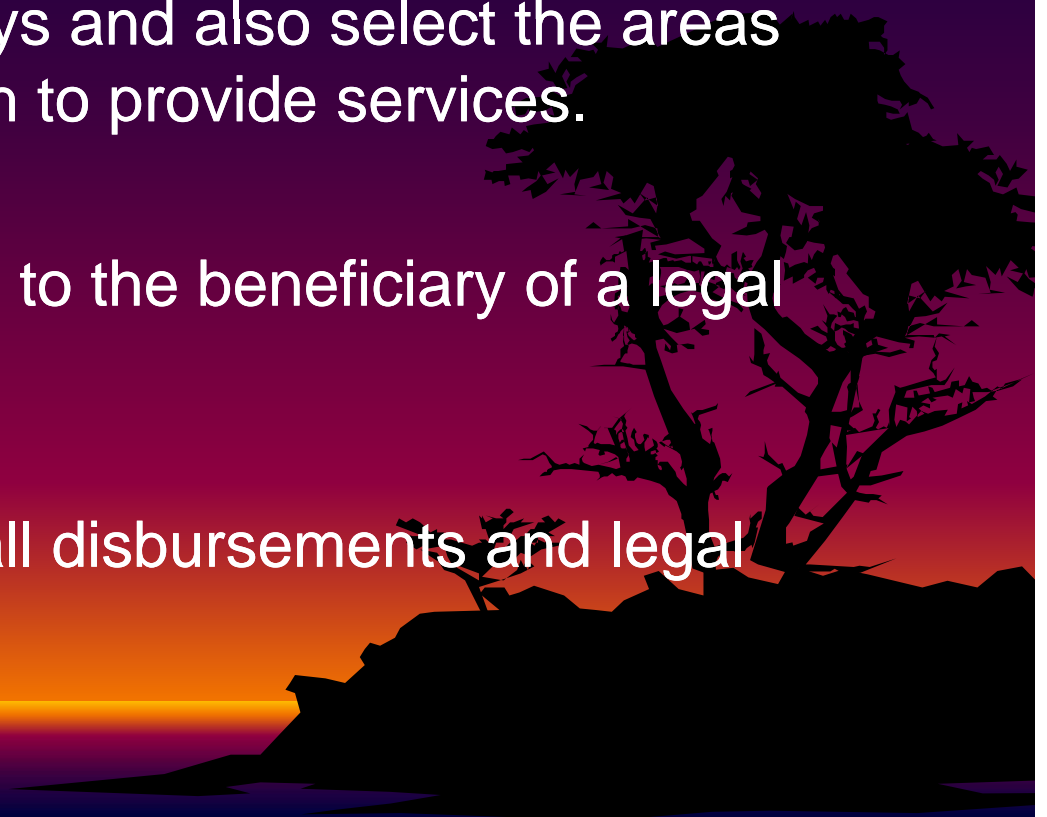
Legal Aid

- Legal Aid is a system created by the Community Legal Services Act (Cap 112A) to provide free legal services to persons of “insufficient means”, that is, unable to pay for their own legal representation.
- The Community Legal Services Commission administers the legal aid scheme through its office, Community Legal Services in Criminal, Family, and Civil.
- Currently, there are 130 attorneys on panel.



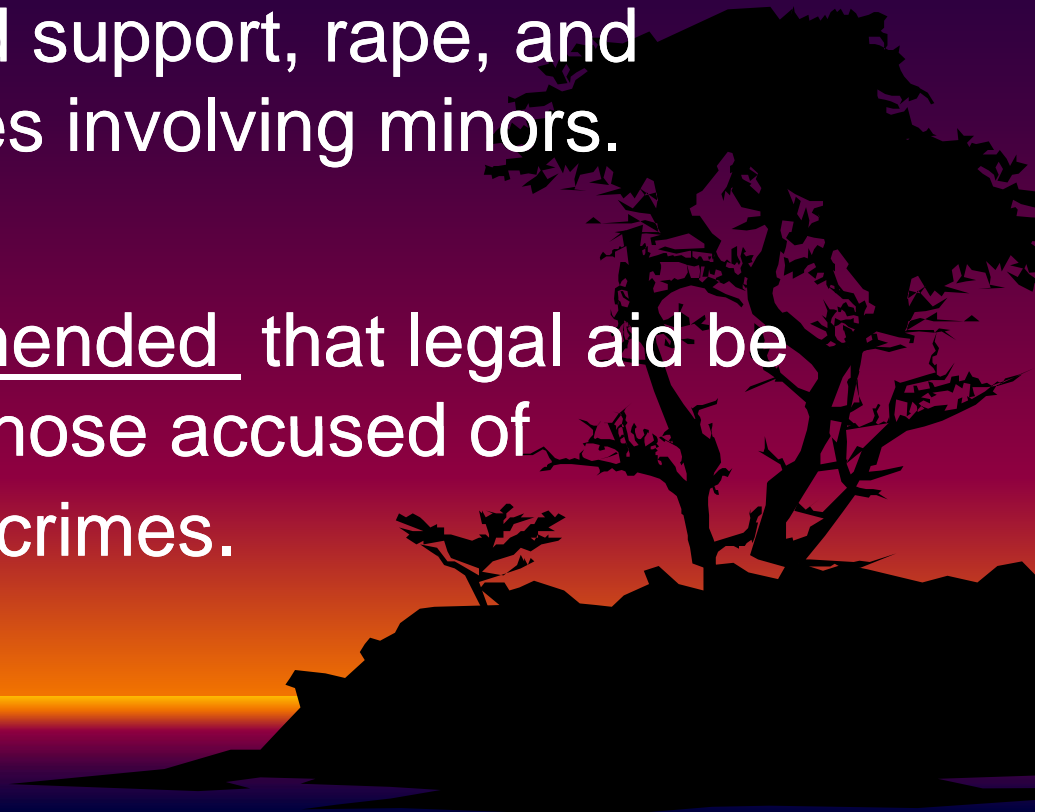
Legal Aid (con't.)

- All attorneys-at-law are invited to work for the Legal Aid Scheme. They decide whether or not they wish to join the panel of attorneys and also select the areas of law in which they wish to provide services.
- Legal Aid is entirely free to the beneficiary of a legal aid certificate.
- The Government pays all disbursements and legal fees for the beneficiary.



Legal Aid (con't.)

- The government provides free legal aid to the extremely poor in cases involving family matters, child support, rape, and murder and all cases involving minors.
- It has been recommended that legal aid be extended to cover those accused of committing serious crimes.



Legal Aid (con't.)

- To determine who may benefit is done in two (2) stages:



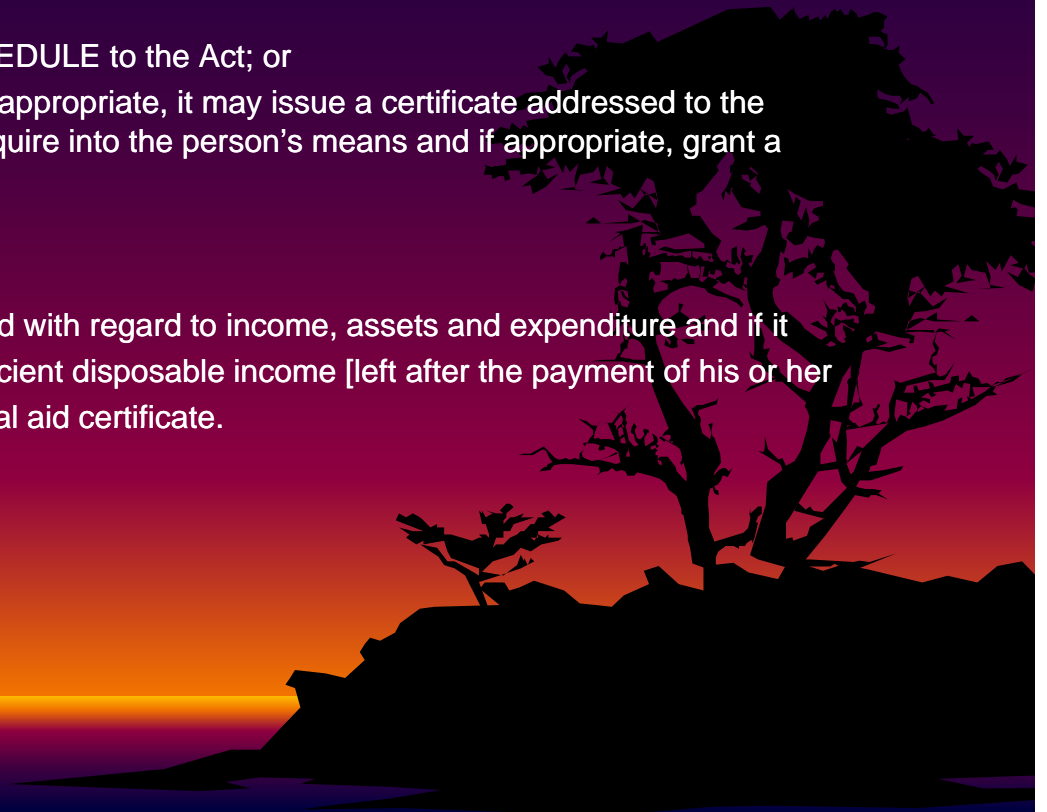
FIRST – The Legal problem, for which representation is being sought, has to be one of those matters either:

- (a) Listed in the FIRST SCHEDULE to the Act; or
- (b) Where the court thinks it appropriate, it may issue a certificate addressed to the director asking him to enquire into the person's means and if appropriate, grant a legal aid certificate.



SECOND-

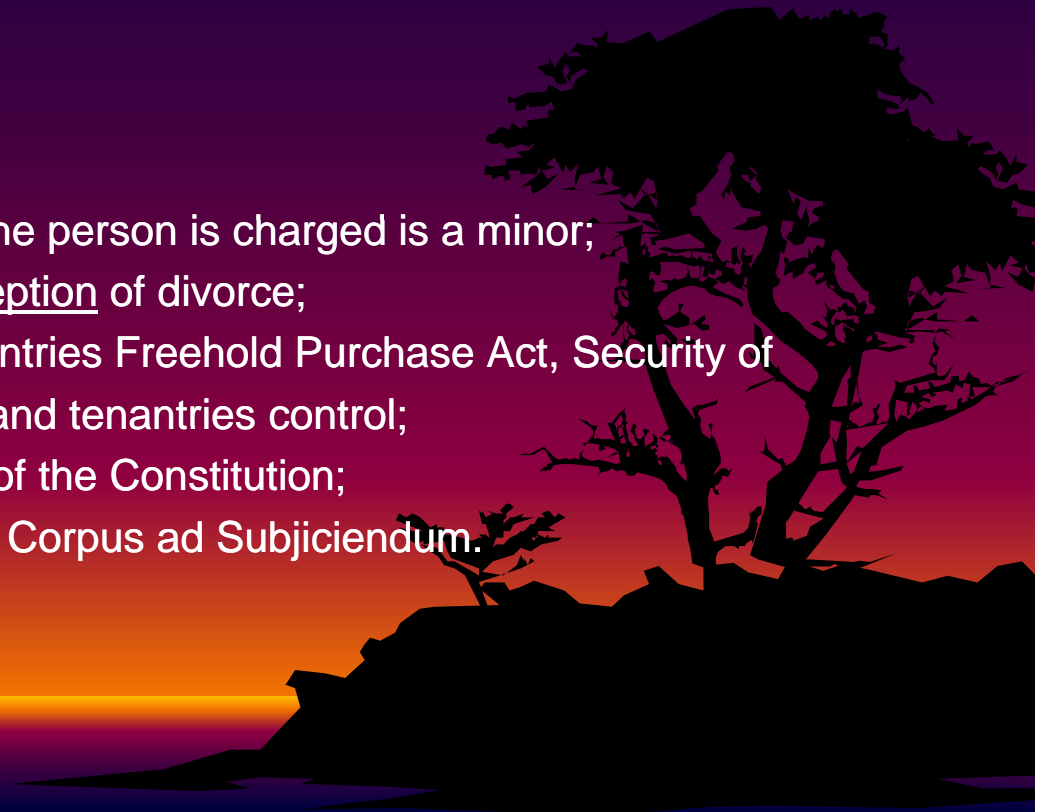
in all cases, the applicant is examined with regard to income, assets and expenditure and if it appears that the applicant has insufficient disposable income [left after the payment of his or her allowable expenses], he issues a legal aid certificate.



Legal Aid (con't.)

Cases that are eligible for Legal Aid include:

- A. Any capital offence;
- B. Manslaughter;
- C. Infanticide;
- D. Concealment of birth;
- E. Rape;
- F. All indictable offences where the person is charged is a minor;
- G. All family matters with the exception of divorce;
- H. Matters arising under the Tenancies Freehold Purchase Act, Security of Tenure of Small Holdings Act and tenancies control;
- I. Applications under section 24 of the Constitution;
- J. Applications for writ of Habeus Corpus ad Subjiciendum.



Alternate Dispute Resolution

Mediation



Conflict Resolution

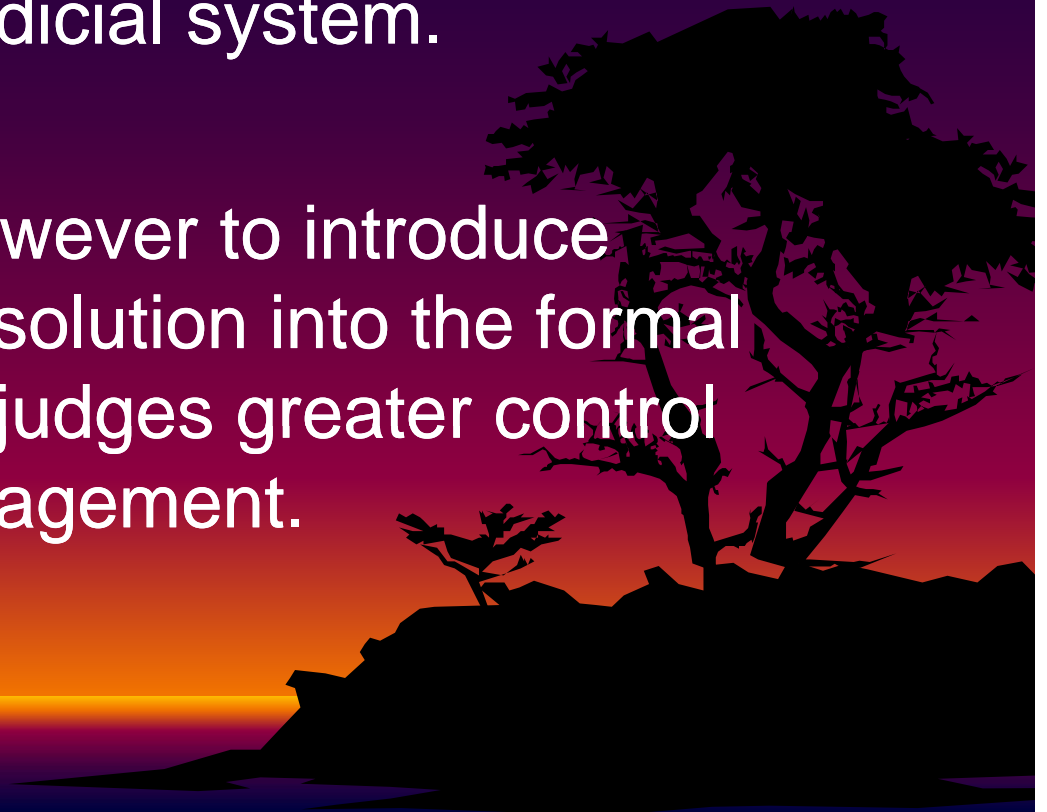


Team Building



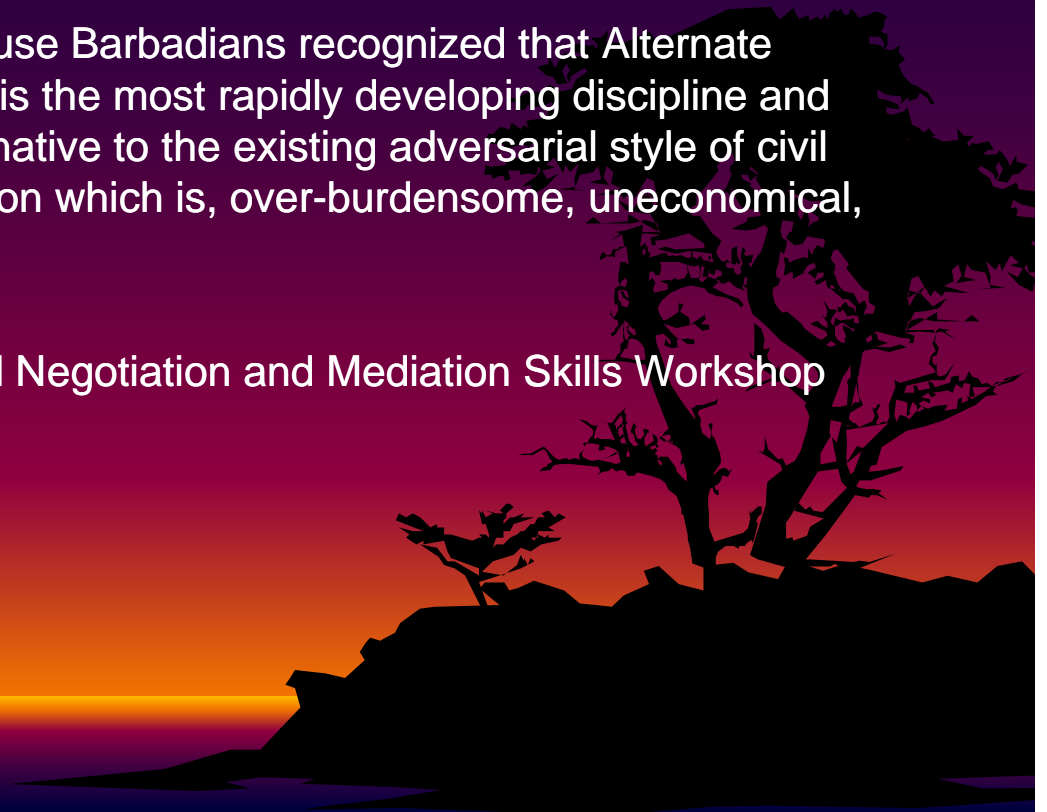
Alternate Dispute Resolution

- Alternate methods of dispute resolution are encouraged in Barbados, but are not yet a part of the formal judicial system.
- There are plans, however to introduce alternate dispute resolution into the formal system and to give judges greater control over case flow management.



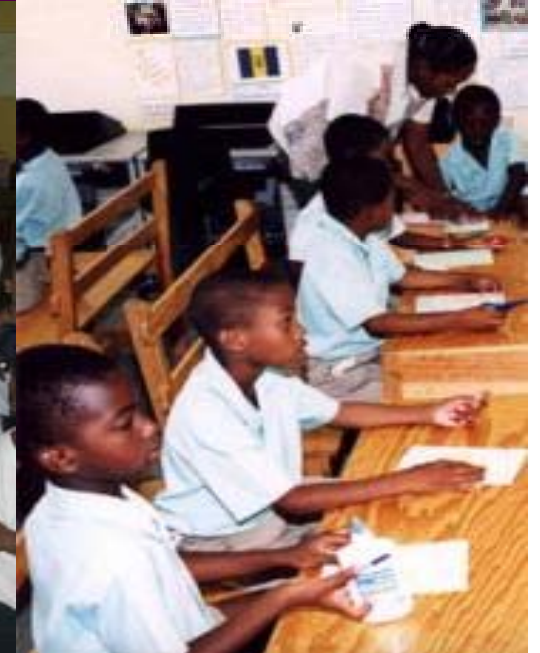
Alternate Dispute Resolution

- The ADR Association of Barbados Inc., a non-profit, non-governmental organization was incorporated on November 29, 2004 as the first professional Association for dispute resolution in Barbados.
- The Association was formed because Barbadians recognized that Alternate Dispute Resolution and mediation is the most rapidly developing discipline and profession in the world as an alternative to the existing adversarial style of civil litigation system of conflict resolution which is, over-burdensome, uneconomical, and often inefficient.
- Alternative Dispute Resolution and Negotiation and Mediation Skills Workshop are available in Barbados.



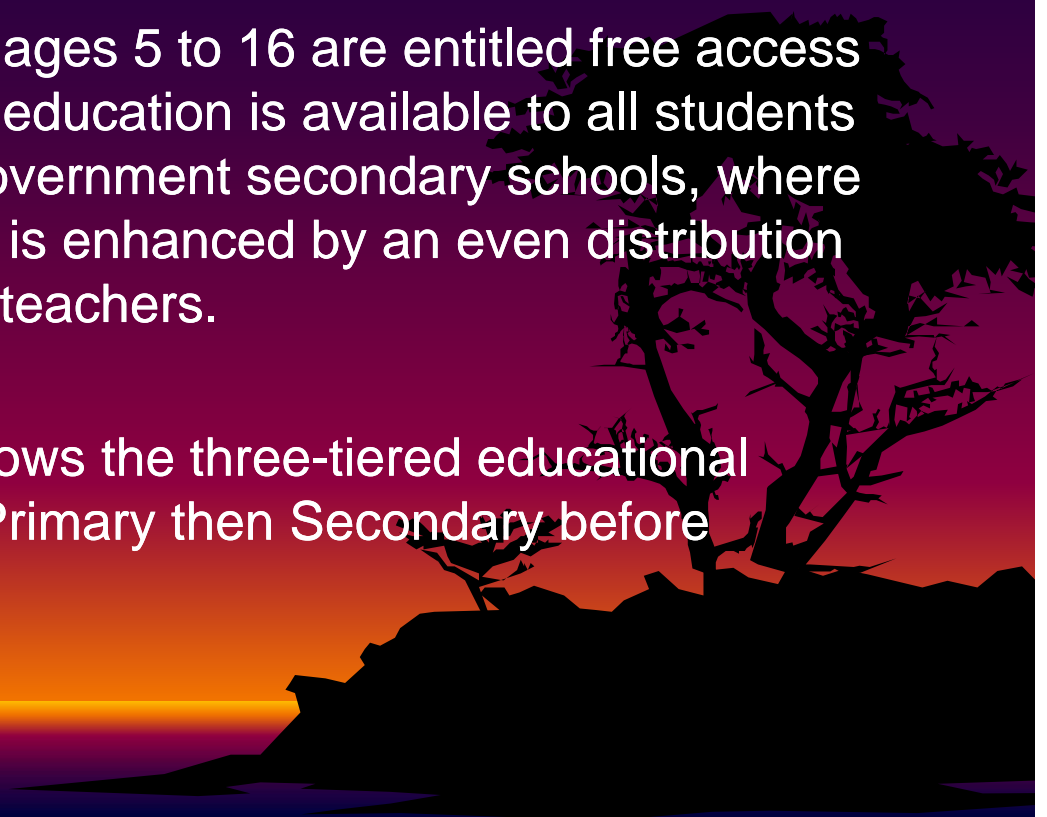


Education



Education

- The educational system of Barbados is primarily fashioned after the educational system in Britain.
- All citizens of Barbados ages 5 to 16 are entitled free access to free enrollment. Free education is available to all students attending the island's government secondary schools, where the quality of instruction is enhanced by an even distribution of trained and graduate teachers.
- Currently, Barbados follows the three-tiered educational system which starts at Primary then Secondary before moving on to Tertiary.



Education

- There are three kinds of primary and secondary schools:

Government Owned

- Expenditure is met from public coffers

Assisted Private

- Receive Grants for covering salaries and assist with curriculum

Independent Schools

- Receive Funds from private sources and endowed scholarships



Education

- 3 Levels of schools:

Primary

- 80 Primary Schools
- Enrollment 26,627

Secondary

- 23 Government Secondary Schools
- Enrollment 20,435

- Vocational and Technical Colleges and University of West Indies
- 3 schools

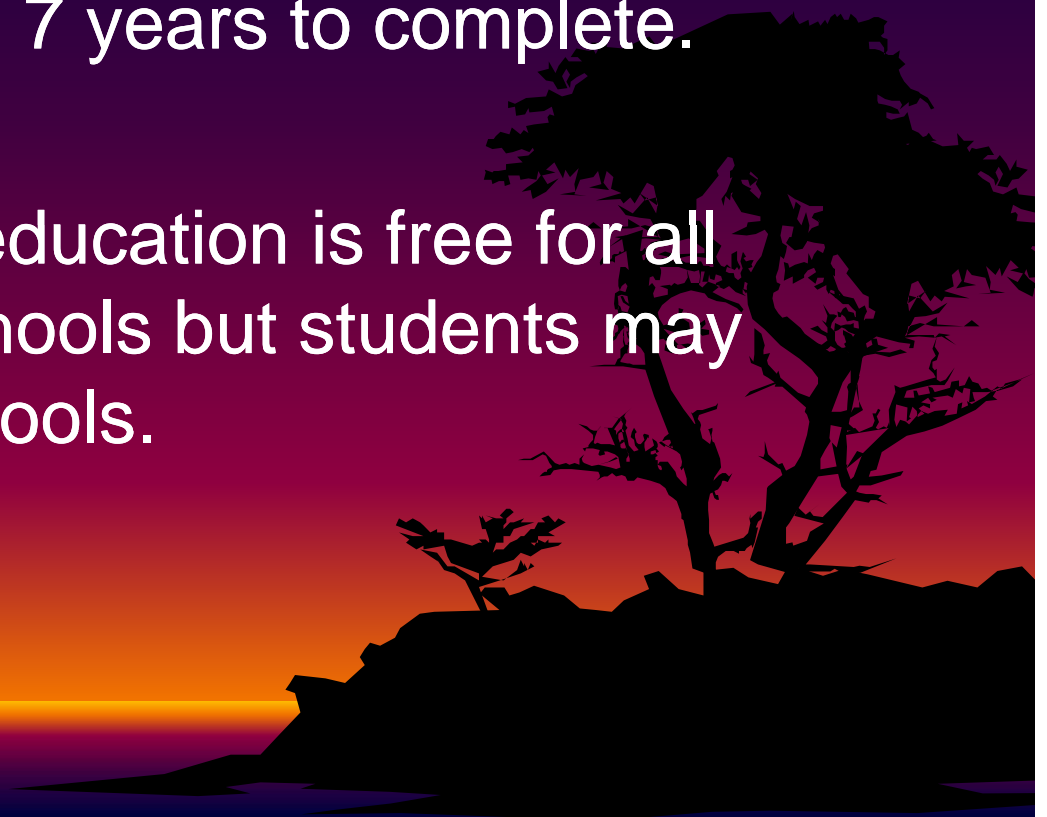
Education (Primary)

- Primary school ranges from children 3-11.
- Primary level is subdivided further into nursery and junior levels.
- Nursery education is for those at 3-7 years of age, then move to junior level up to the age of 11.



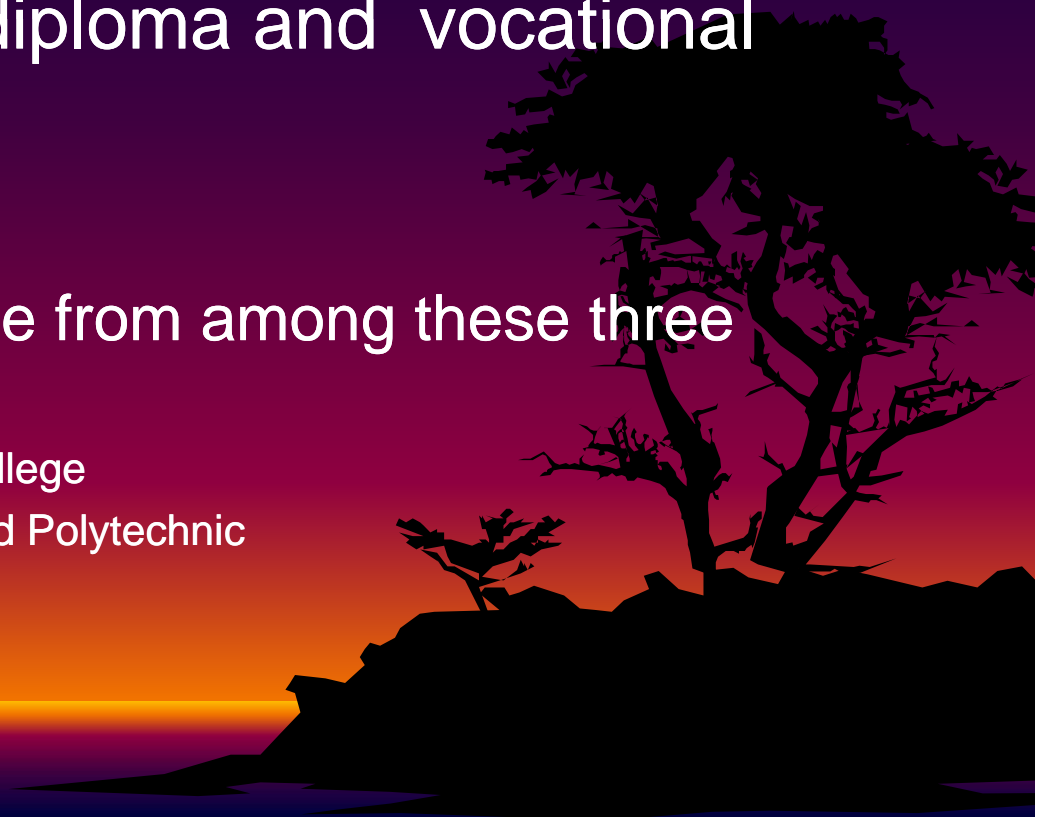
Education (Secondary)

- After graduating from Primary school, students are now eligible for the Secondary level which will take 7 years to complete.
- Secondary school education is free for all government-run schools but students may enroll at private schools.



Education (Tertiary)

- In the tertiary level (16 and up), there are only three schools that provide degree level education for both diploma and vocational degrees.
- Barbadians may choose from among these three schools:
 - The Barbados Community College
 - The Samuel Jackman Prescod Polytechnic
 - University of West Indies



Education (con't.)

- Barbados prides itself in belonging to the top 5 countries with a literacy rate of being close to 100%.
- The government has spent millions of dollars investing in education programs.
- Barbados is considered the 51st richest country in the world if the basis would be per capita income.



REID CASE STUDY



REID CASE STUDY

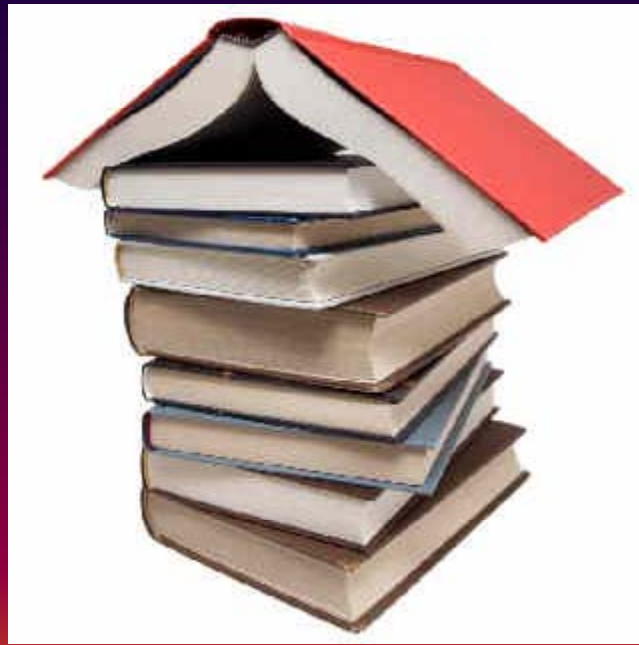
Meet the Reid's...



- Yolanda and Jerome were married for 28 years before filing for divorce in the Commonwealth of Massachusetts.
- The Reid Matter was recently heard before the Caribbean Court of Justice after numerous appeals.
- How did a dissolution of marriage filed in the Commonwealth of Massachusetts go before the CCJ?

REID CASE STUDY

Well, it is a long story...



REID CASE STUDY

Let's start with the end...

IN THE CARIBBEAN COURT OF JUSTICE

Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF
BARBADOS

Reid,

vs.

Reid.



REID CASE STUDY

Caribbean Court of Justice ...How did we get here?

The Conflict of Laws (rule 41)

A foreign judgment which is final and conclusive on the merits and not impeachable under any of Rules 42 to 45 is conclusive as to any matter thereby adjudicated upon, and cannot be impeached for any error either of fact or of law.

(Rules 42 to 45 address questions of Jurisdiction, Fraud, and Public Policy)

In other words, Courts cannot be used as a forum for correction of errors (real or perceived) of foreign courts.



REID CASE STUDY

Caribbean Court of Justice

Issue(s)

(1) Jurisdiction?

(2) Fraud?

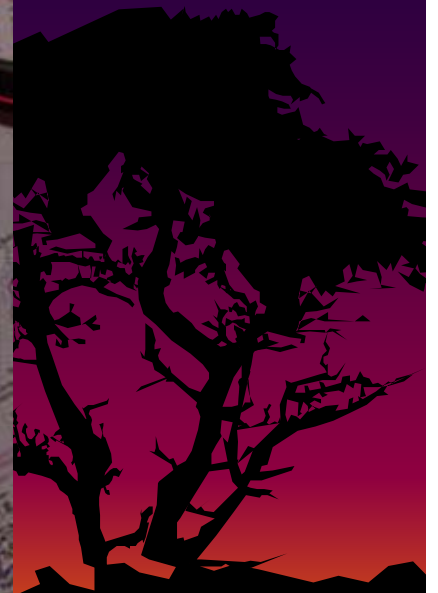
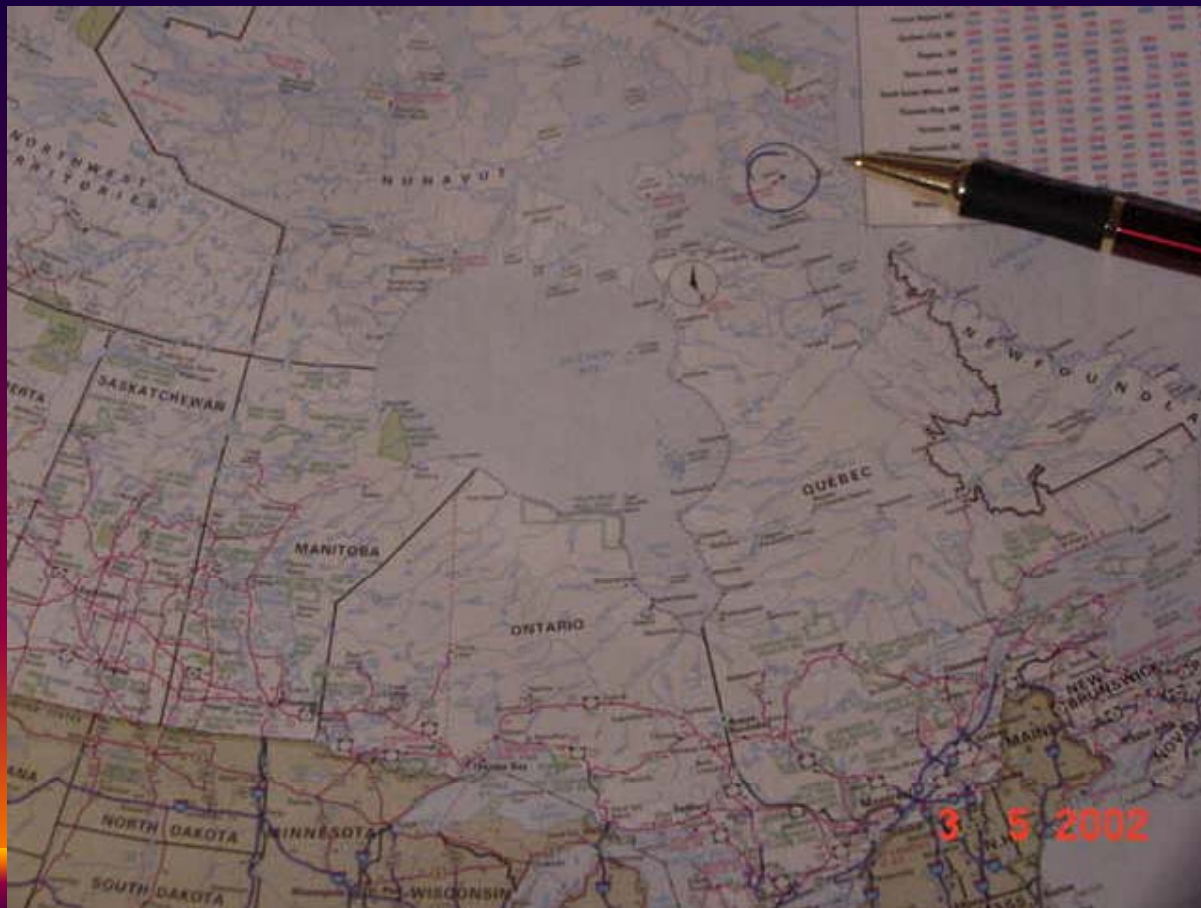
(3) Public policy?



REID CASE STUDY

Caribbean Court of Justice ...How did we get here?

Jurisdiction



REID CASE STUDY

Jurisdiction?

Fundamental question for the enforcement of a foreign judgment at common law is that the foreign court should have jurisdiction according to rules of private international law.

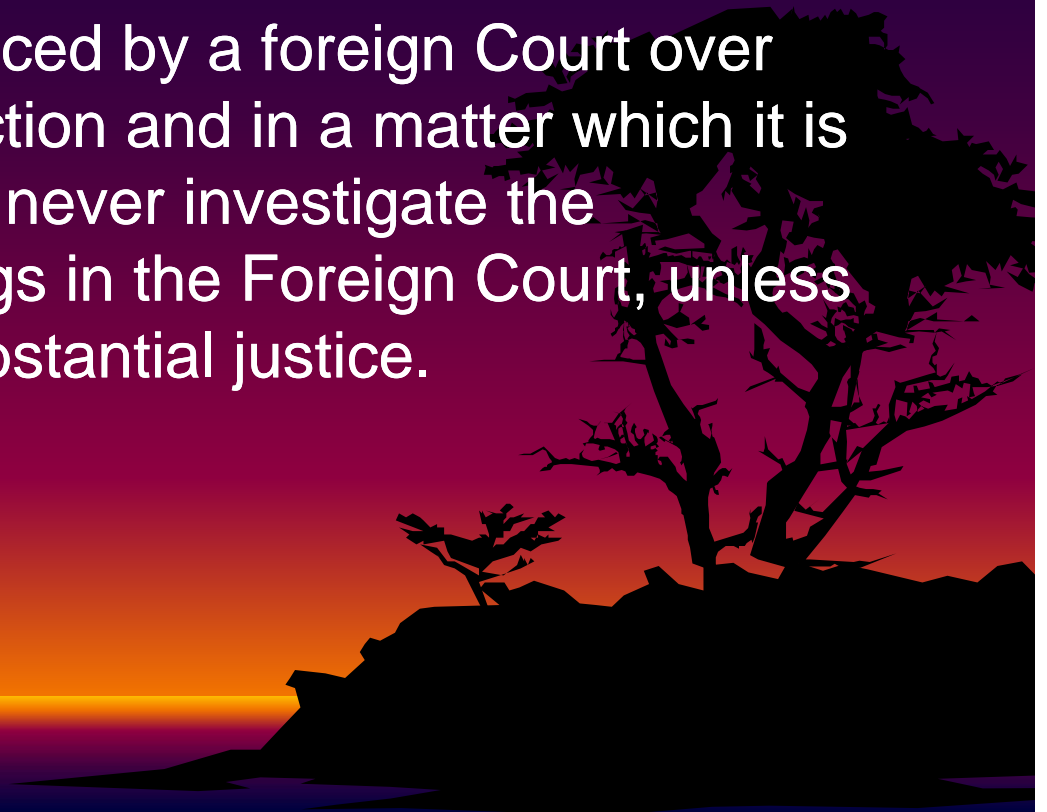


REID CASE STUDY

Jurisdiction?

Private International Law says...

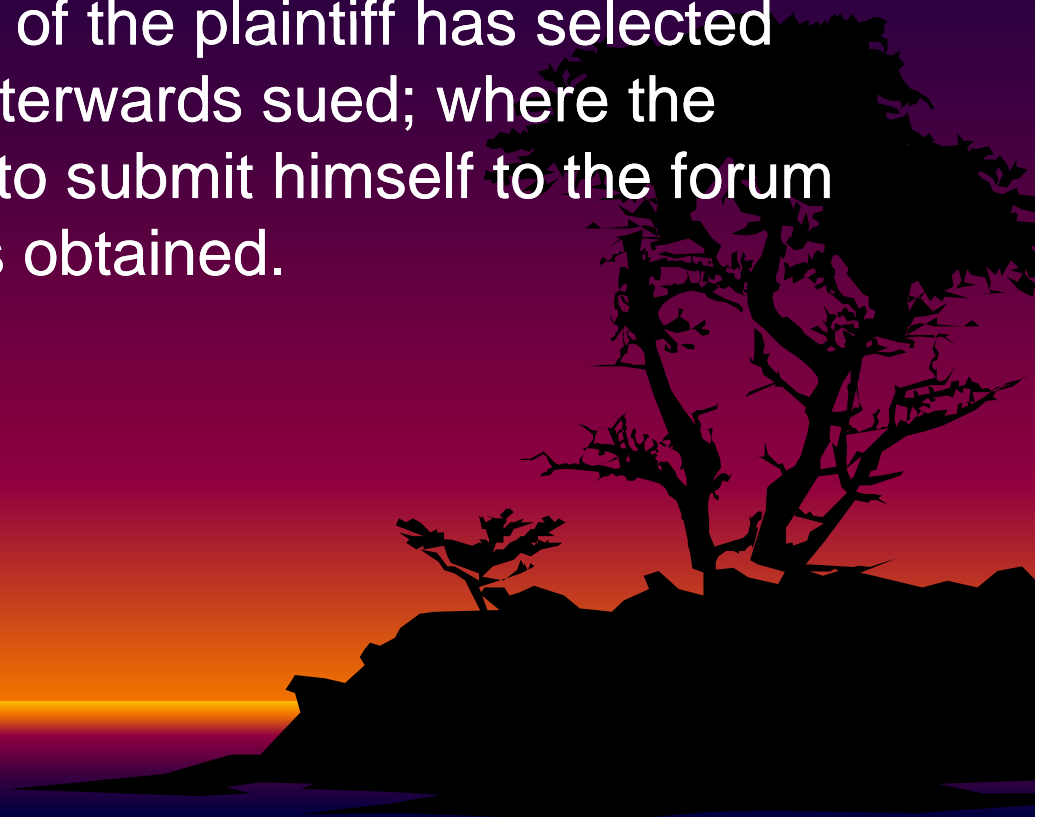
When a judgment is pronounced by a foreign Court over person(s) within its jurisdiction and in a matter which it is competent to deal, Courts never investigate the propriety of the proceedings in the Foreign Court, unless it was against views of substantial justice.



REID CASE STUDY

Jurisdiction? (con't.)

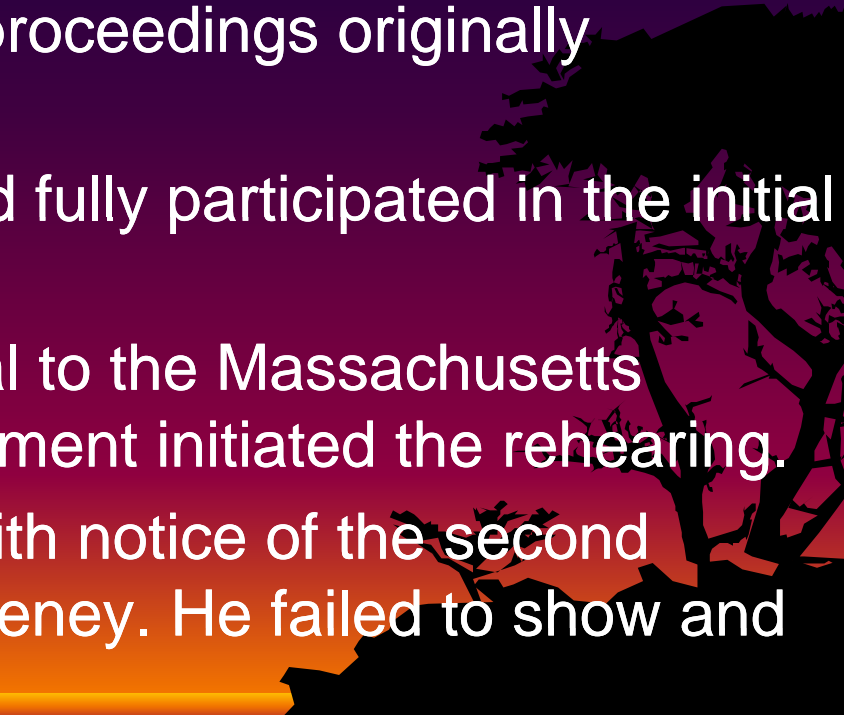
Rule of Law: Where a defendant was resident in a foreign country when the action began; where the defendant in the character of the plaintiff has selected the forum in which he is afterwards sued; where the defendant has contracted to submit himself to the forum in which the judgment was obtained.



REID CASE STUDY

Jurisdiction? (con't.)

Facts:

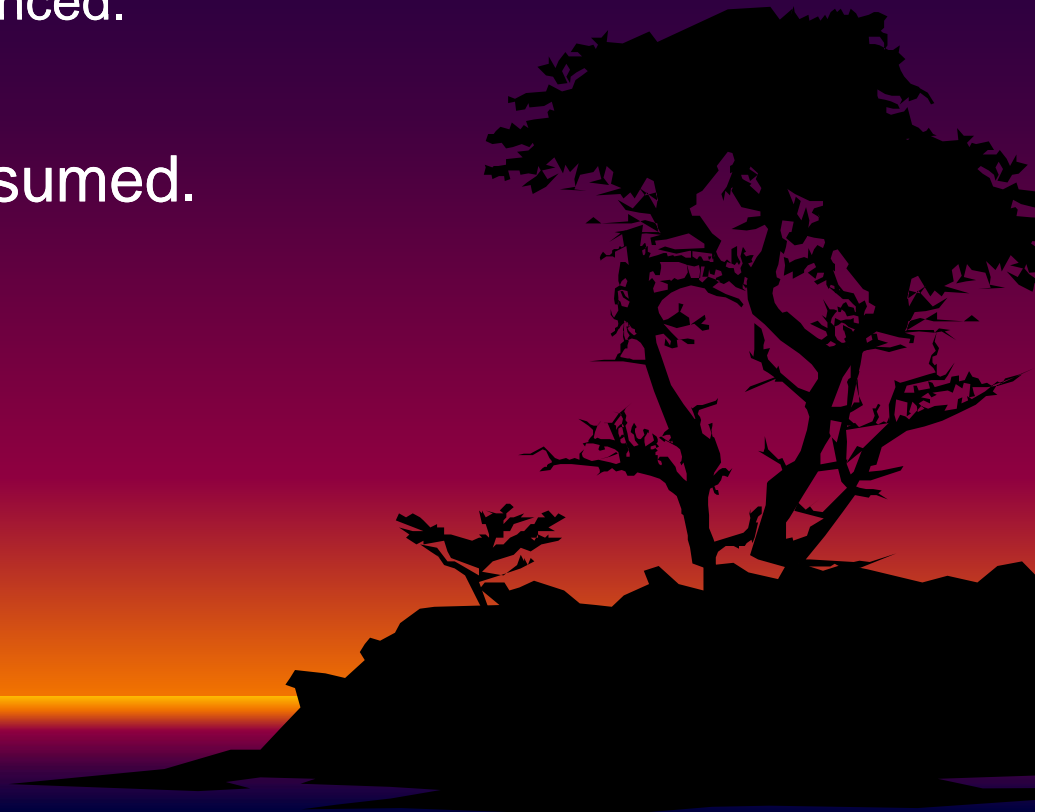
- (1) Mr. Reid was present and a resident of Massachusetts when the proceedings originally commenced.
 - (2) Mr. Reid voluntarily and fully participated in the initial stages of the proceedings.
 - (3) Mr. Reid filed an appeal to the Massachusetts Appeals Court whose judgment initiated the rehearing.
 - (4) Mr. Reid was served with notice of the second hearing before Judge Sweeney. He failed to show and did not send counsel.
- 
- A silhouette of a tree is positioned on the right side of the slide, set against a background of a sunset or sunrise. The sky transitions from a deep blue at the top to a bright orange and yellow near the horizon, where a thin line of light suggests the sun's position. The tree's branches are dark and detailed, contrasting with the lighter sky.

REID CASE STUDY

Jurisdictional Analysis? (con't.)

Where a defendant was resident in a foreign country when the action began jurisdiction is assumed. At the time the law suit began Mr. Reid was present and resident of Massachusetts at the time the dissolution of marriage commenced.

Therefore, jurisdiction is presumed.



REID CASE STUDY

Jurisdictional Analysis? (con't.)

Where the defendant in the character of the plaintiff has selected the forum in which he is afterwards sued, jurisdiction is presumed. In this case, Mr. Reid filed an appeal to the Massachusetts Appeals Court whose judgment initiated the rehearing. Because Mr. Reid held himself out within the commonwealth of Massachusetts, Jurisdiction is presumed.

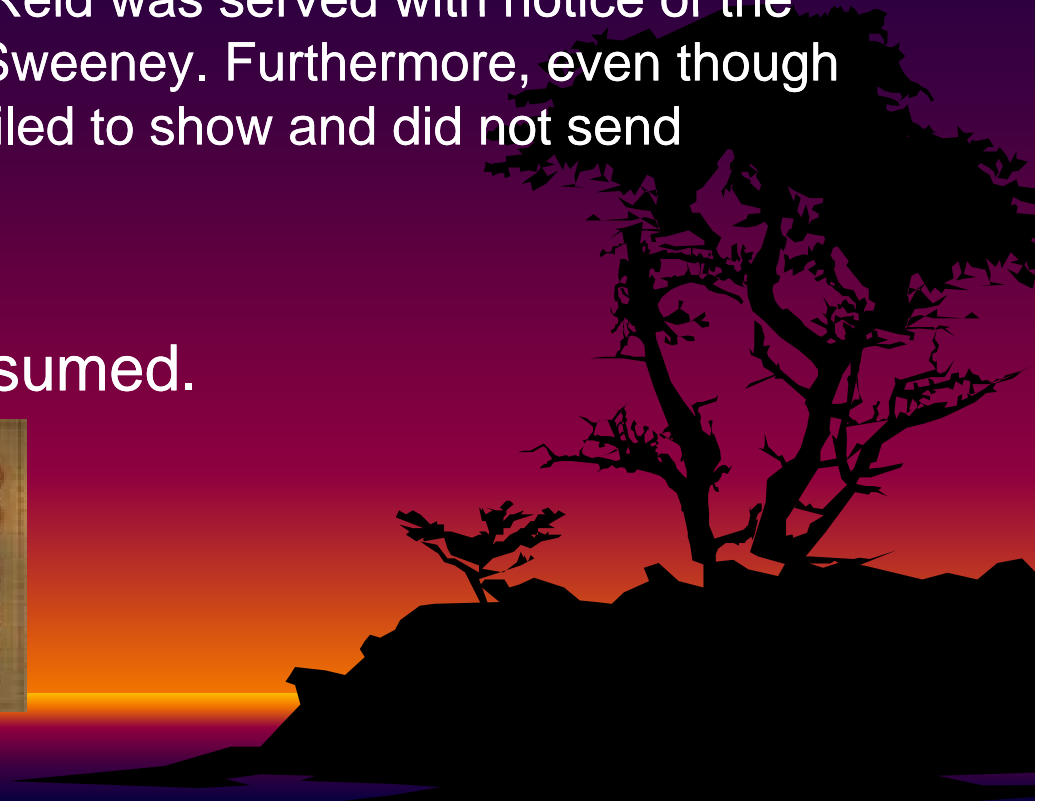


REID CASE STUDY

Jurisdiction? (con't.)

Where the defendant has contracted to submit himself to the forum in which the judgment was obtained, jurisdiction is presumed. Here, Mr. Reid voluntarily and fully participated in the initial stages of the proceedings. Additionally, Mr. Reid was served with notice of the second hearing before Judge Sweeney. Furthermore, even though he received notice, Mr. Reid failed to show and did not send counsel.

Therefore, jurisdiction is presumed.



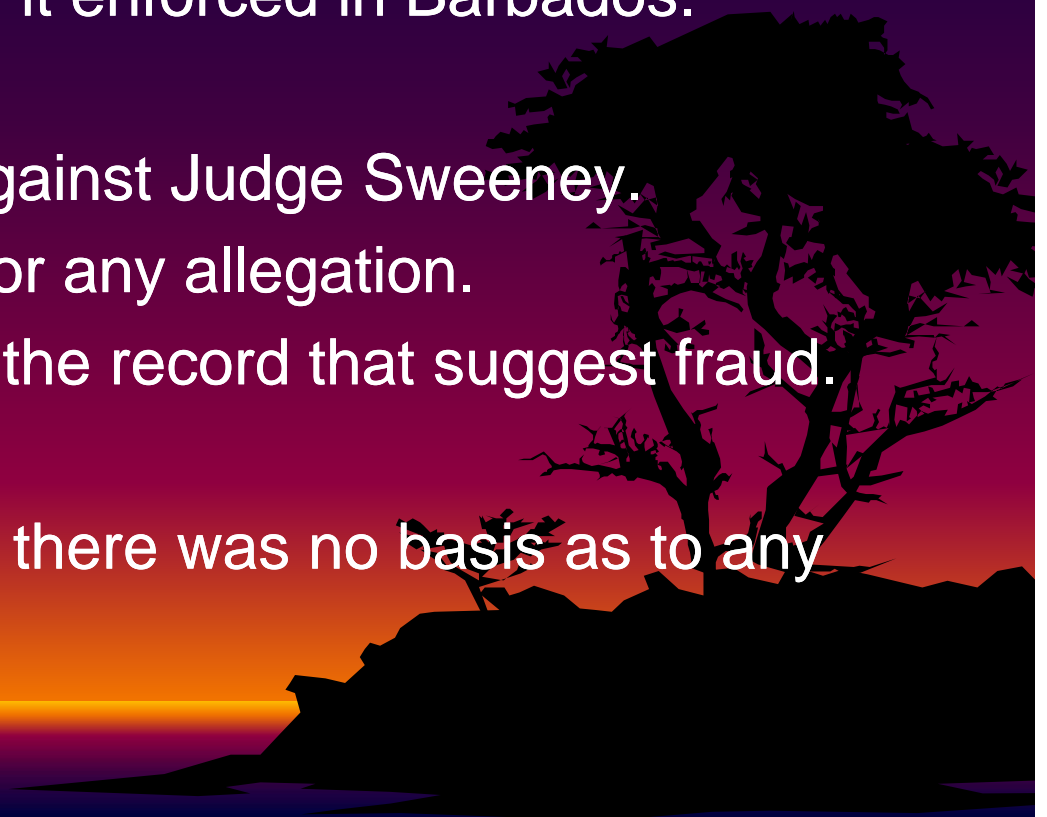
REID CASE STUDY

Next Issue...*Fraud*

A foreign judgment may be impeached for fraud if an attempt is made to have it enforced in Barbados.

- (1) No fraud was alleged against Judge Sweeney.
- (2) There was not a basis for any allegation.
- (3) Nor is there anything in the record that suggest fraud.

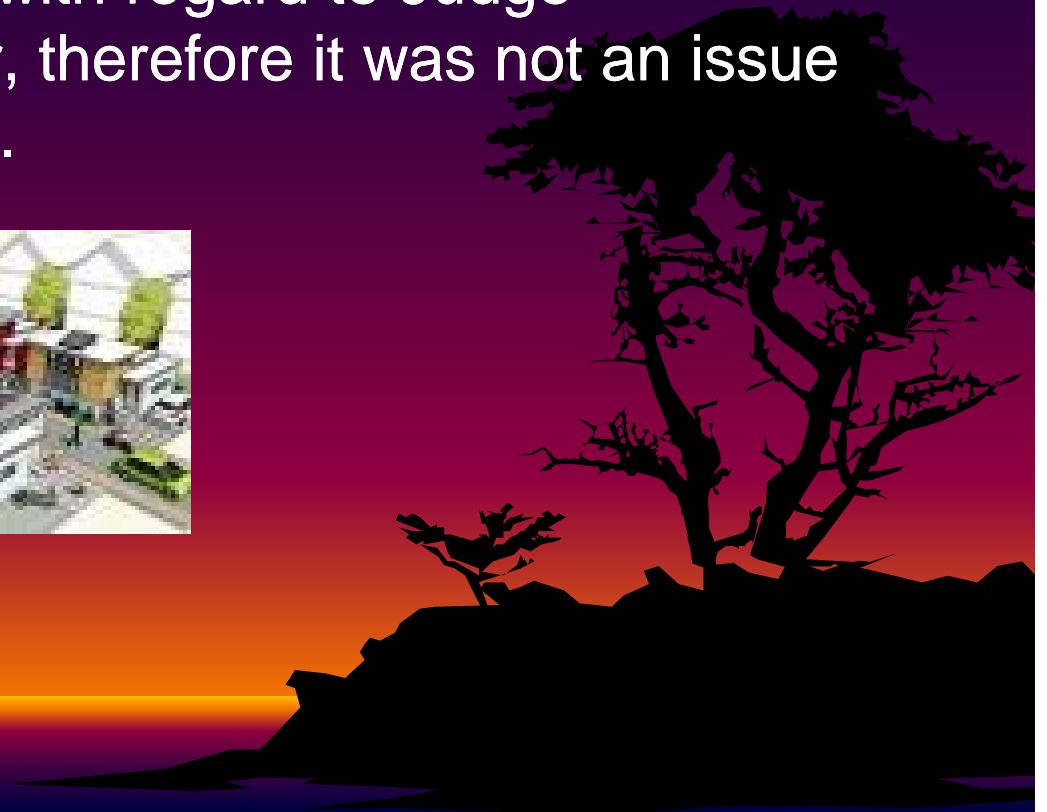
Therefore, this Court found there was no basis as to any Fraud by Ms. Reid. .



REID CASE STUDY

Next Issue... *Public Policy*

No argument were raised to suggest that there was a violation of public policy with regard to Judge Sweeney's second order, therefore it was not an issue for this Court to consider.



REID CASE STUDY

Holding

The issue of substantial justice must be determined by standards accepted by the courts of Barbados.

System of justice or the course of proceedings in the foreign court will be acceptable only if it resembles or approximate what obtains in Barbados.

Mr. Reid had the option of appearing in the second hearing and then, it appropriate, could have filed a second appeal.

Justice Moore was right to order summary judgment in this matter. We therefore allow the appeal with cost.

Justice Moore's orders are restored.

REID CASE STUDY

So that's how the story ended.

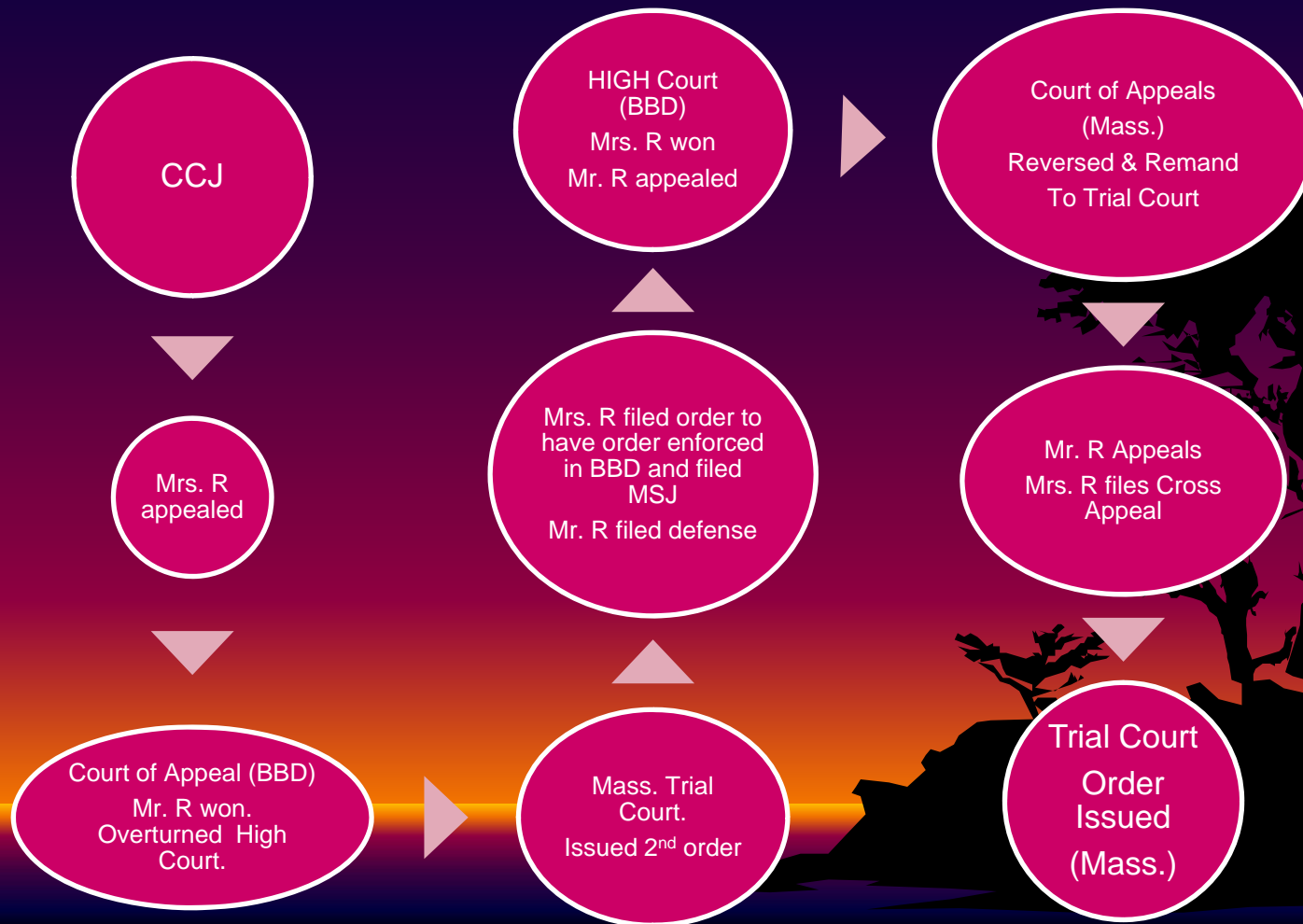


But...there was a long road through the court system prior to reaching the CCJ



REID CASE STUDY

Let's look at the road less traveled...



REID CASE STUDY

Barbados Court of Appeal

- Court of Appeal overturned Justice Moore's decision and remitted case for trial.
- Mrs. Reid appealed the judgment of the Court of Appeals to the Caribbean Court of Justice.

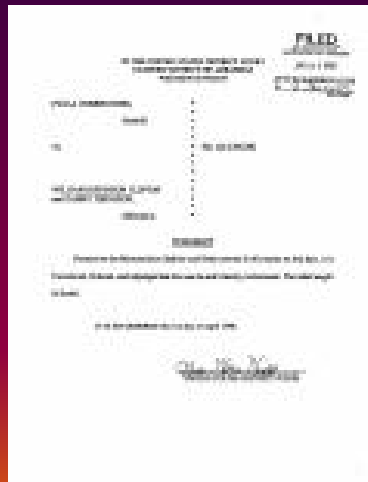


REID CASE STUDY

Barbados High Court

Justice Moore reviewed the Motion for Summary Judgment and granted the motion

- Mrs. Reid prevailed.
- Mr. Reid appealed.



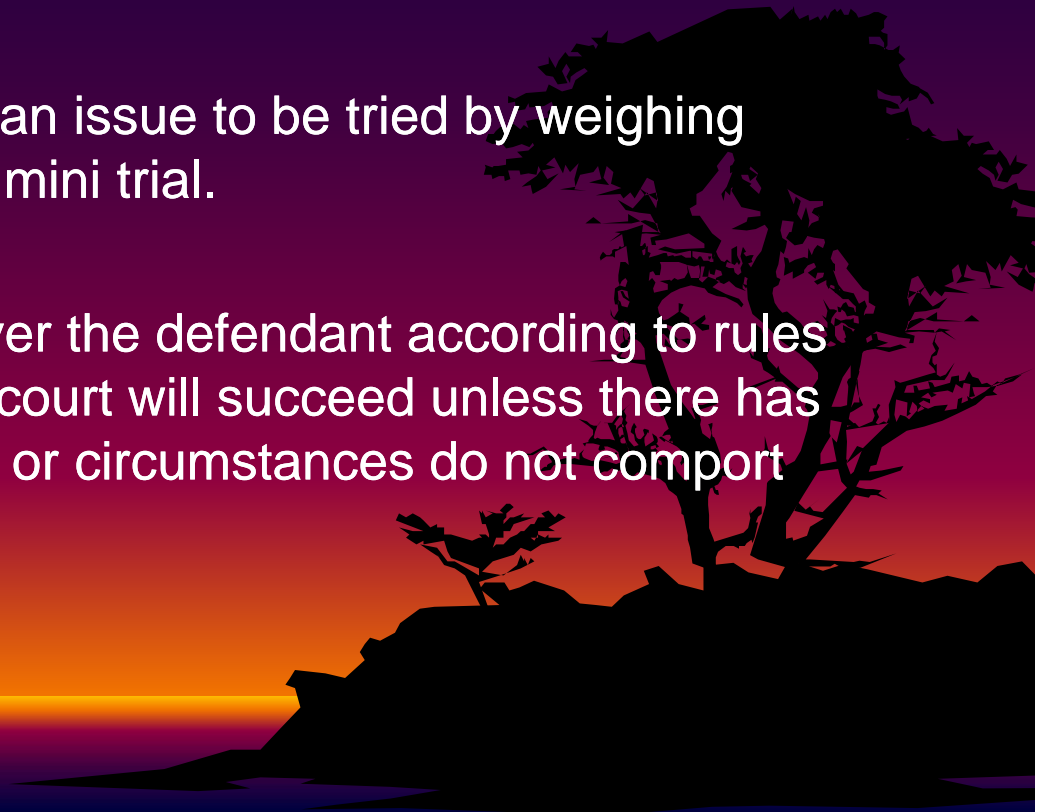
REID CASE STUDY

Motion for Summary Judgment Enforcement in Foreign Court

In order to obtain a motion for summary judgment a claimant must establish that there is no question of material fact.

Court determines whether there is an issue to be tried by weighing opposing affidavits or holding a mini trial.

If a foreign court has jurisdiction over the defendant according to rules of international law, the foreign court will succeed unless there has been a breach of natural justice or circumstances do not comport with substantial judgment.

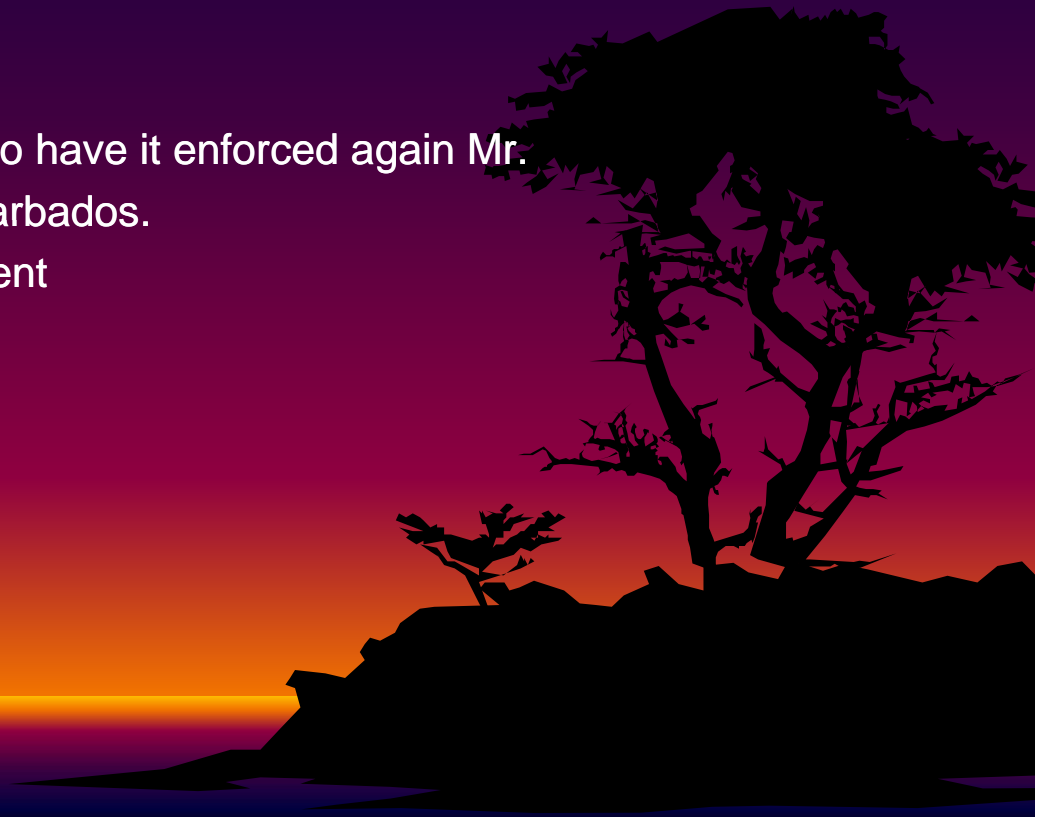


REID CASE STUDY

Court of Commonwealth (2nd time around)

Judge Sweeney conducted further hearings

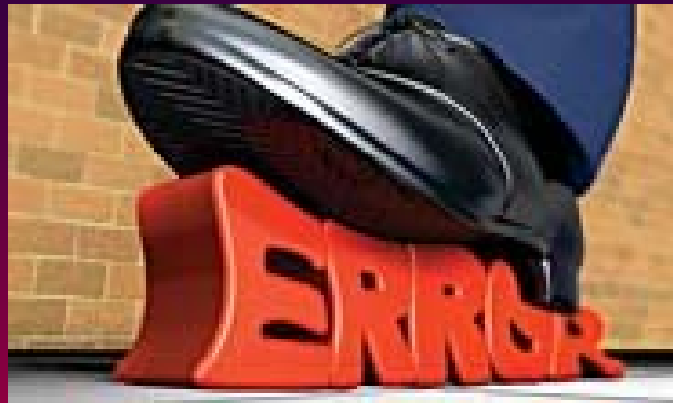
- Mr. Reid was absent
- Did not send his counsel.
- Judge divided assets
- Mrs. Reid filed action in Barbados to have it enforced again Mr. Reid who was then a resident of Barbados.
- Mrs. Reid filed for summary judgment



REID CASE STUDY

Appeals Court of Commonwealth (1st time around)

Reversed Judge Sweeney's Order and Remanded the case back to him for further proceedings



REID CASE STUDY

Court of Commonwealth

4 Day Trial for Dissolution of Marriage

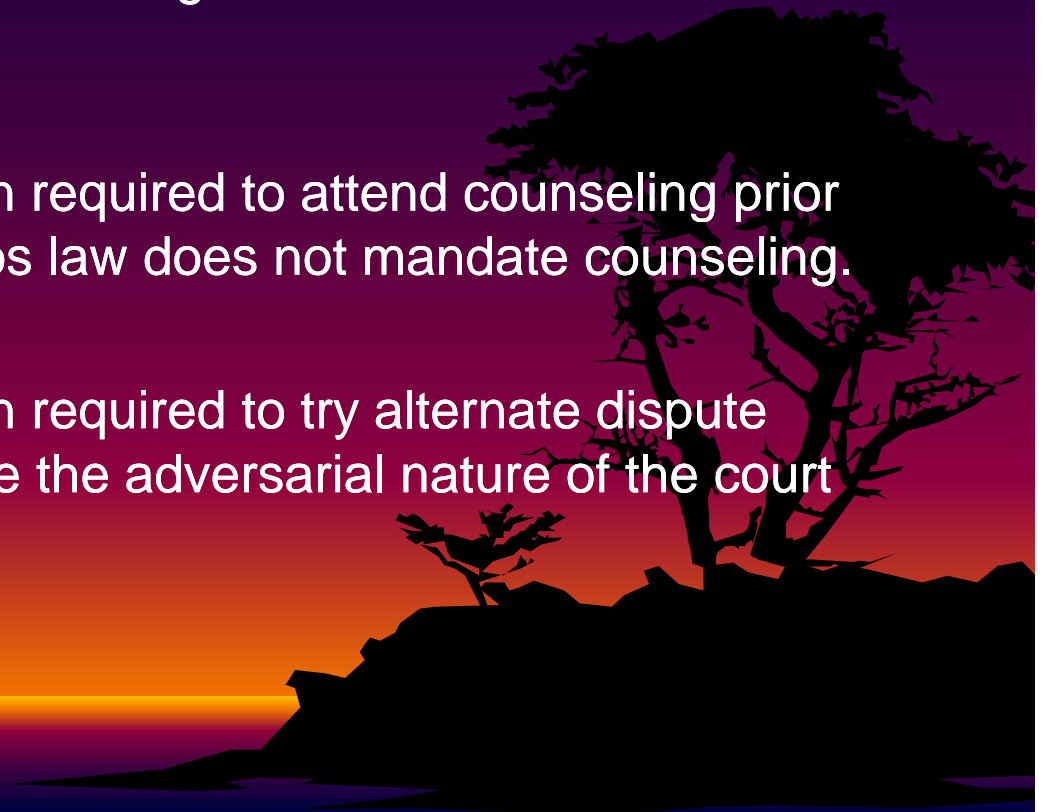
- Judge Sweeney granted divorce
- Mr. Reid appeals order
- Mrs. Reid cross-appeals order



REID CASE STUDY

Quick Points: Barbados Jurisprudence via the Reid's.

- If the Reid's initiated their divorce in Barbados, they would not have been eligible for legal aid because divorces are not covered.
- The Reid's would not have been required to attend counseling prior to the divorce because Barbados law does not mandate counseling.
- The Reid's would not have been required to try alternate dispute resolution in attempt to eliminate the adversarial nature of the court system.



REID CASE STUDY

