



The PIB Draft Matrimonial Property Law

May 16, 2014

The Issue



- When marital breakdown occurs in a First Nation community, the rules of how spouses can divide property are uncertain.
- This is because provinces have no authority to legislate in respect of Matrimonial property on reserves.
- The federal Indian Act makes no reference to the issue of matrimonial property, creating a legislative gap on-reserve.

The Reality



- As provincial and territorial courts do not have the authority to deal with Matrimonial property on a reserve they cannot:
 - order the spouse with a CP to leave the matrimonial home on a reserve so the other spouse can live there;
 - order the property to be seized and sold; or,
 - make a decision about the possession or division of the matrimonial home.

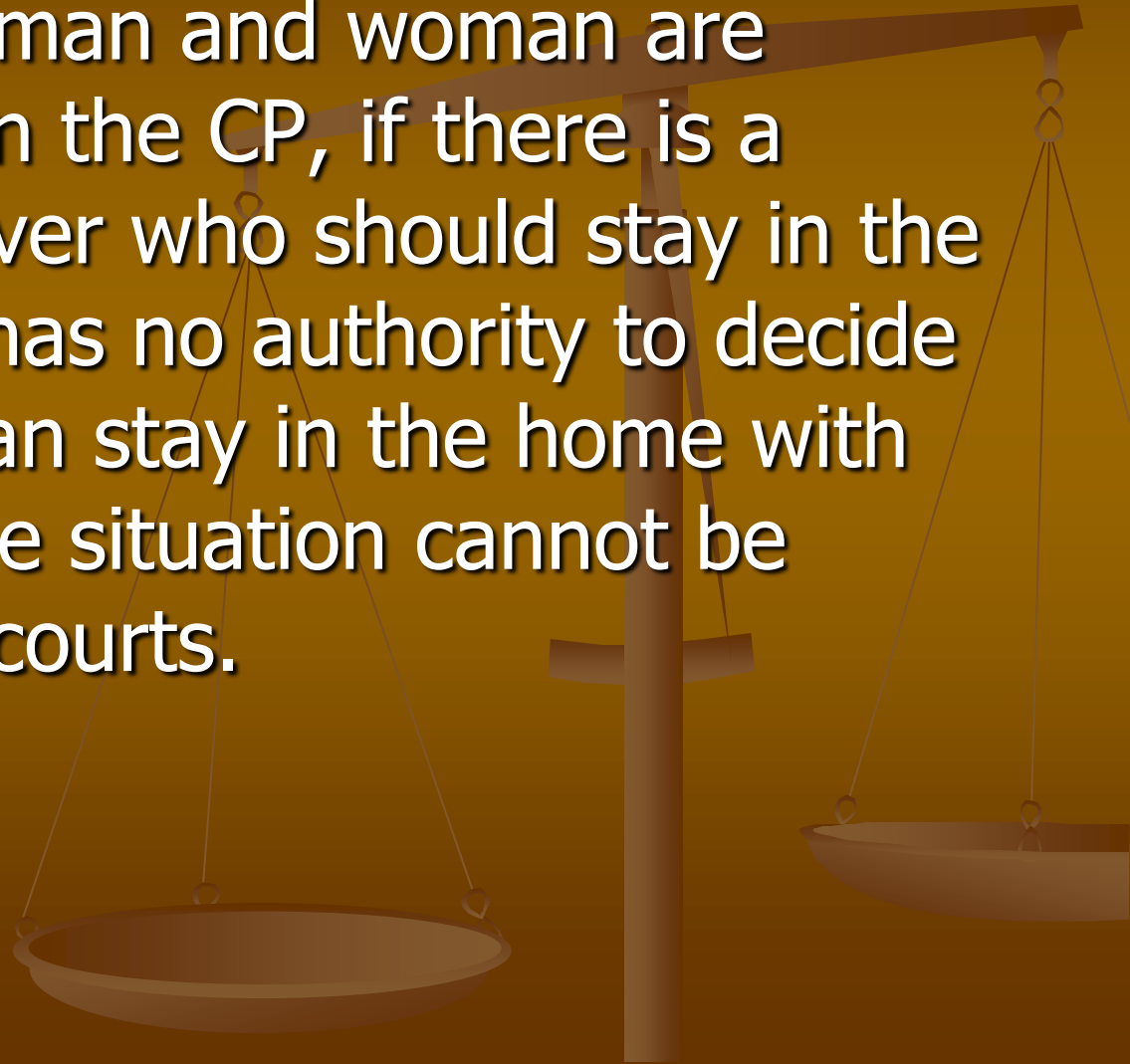
Reality



- This means that when a relationship breakdown occurs, if the spouse with custody of the children is not named on the CP, he or she may have to leave the reserve with the children.
- Housing shortages on reserve land add to the problem. For a non-member living on a reserve with a band member, the end of the relationship usually means the end of the opportunity to live on the reserve.

The Reality

- Even when the man and woman are named jointly on the CP, if there is a disagreement over who should stay in the home, a judge has no authority to decide which spouse can stay in the home with the children. The situation cannot be resolved in the courts.



The Reality



- The court can, however, order one spouse to pay money to the other spouse to compensate for the spouse's share of the value of the matrimonial home.
- These court orders are hard to enforce due to restrictions on the seizure of property and garnishment on reserves.

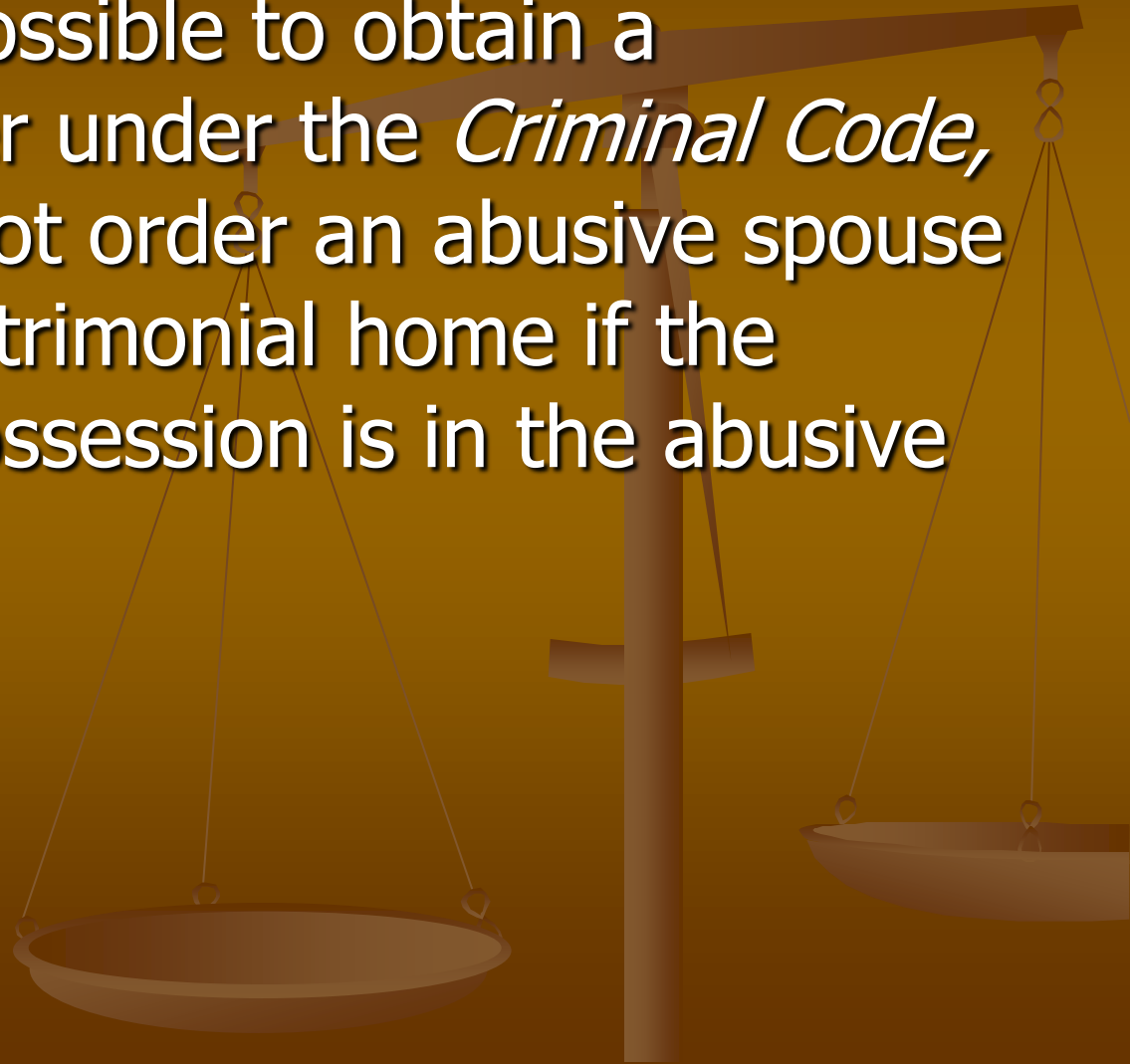
The Reality



- The lack of laws related to on-reserve Matrimonial property results in people, mostly women, living on a reserve, who do not have a CP, and do not have the same legal rights or access to the same legal remedies as people who live off a reserve.
- These individuals may have to leave their matrimonial home and, in some cases, leave the reserve.

Family Violence

- Although it is possible to obtain a restraining order under the *Criminal Code*, the courts cannot order an abusive spouse to leave the matrimonial home if the Certificate of Possession is in the abusive spouse's name.



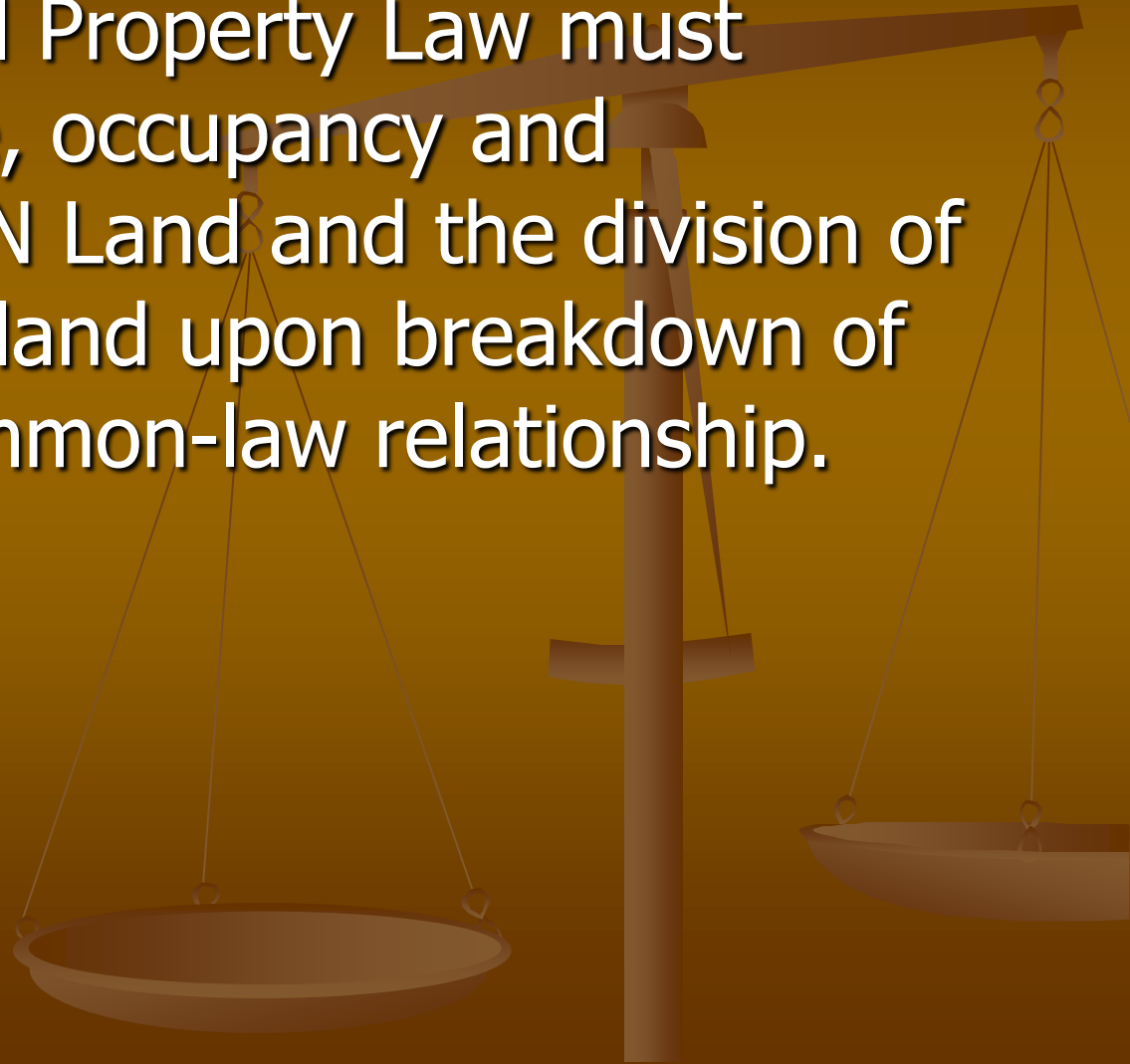
Federal Legislation



- On Monday, December 16, 2013 the federal Family Homes on Reserves and Matrimonial Interests or Rights Act came into force.
- The law provides that First Nations in Canada have one year to come up with their own law or the federal law will apply to reserve lands.
- PIB is developing has one year from the date it comes into force to develop a similar law or it will be bound by the new legislation.
- If PIB signs on to develop a Land Code it must develop its own Matrimonial Law or the federal legislation will apply but the time line is extended to three years.

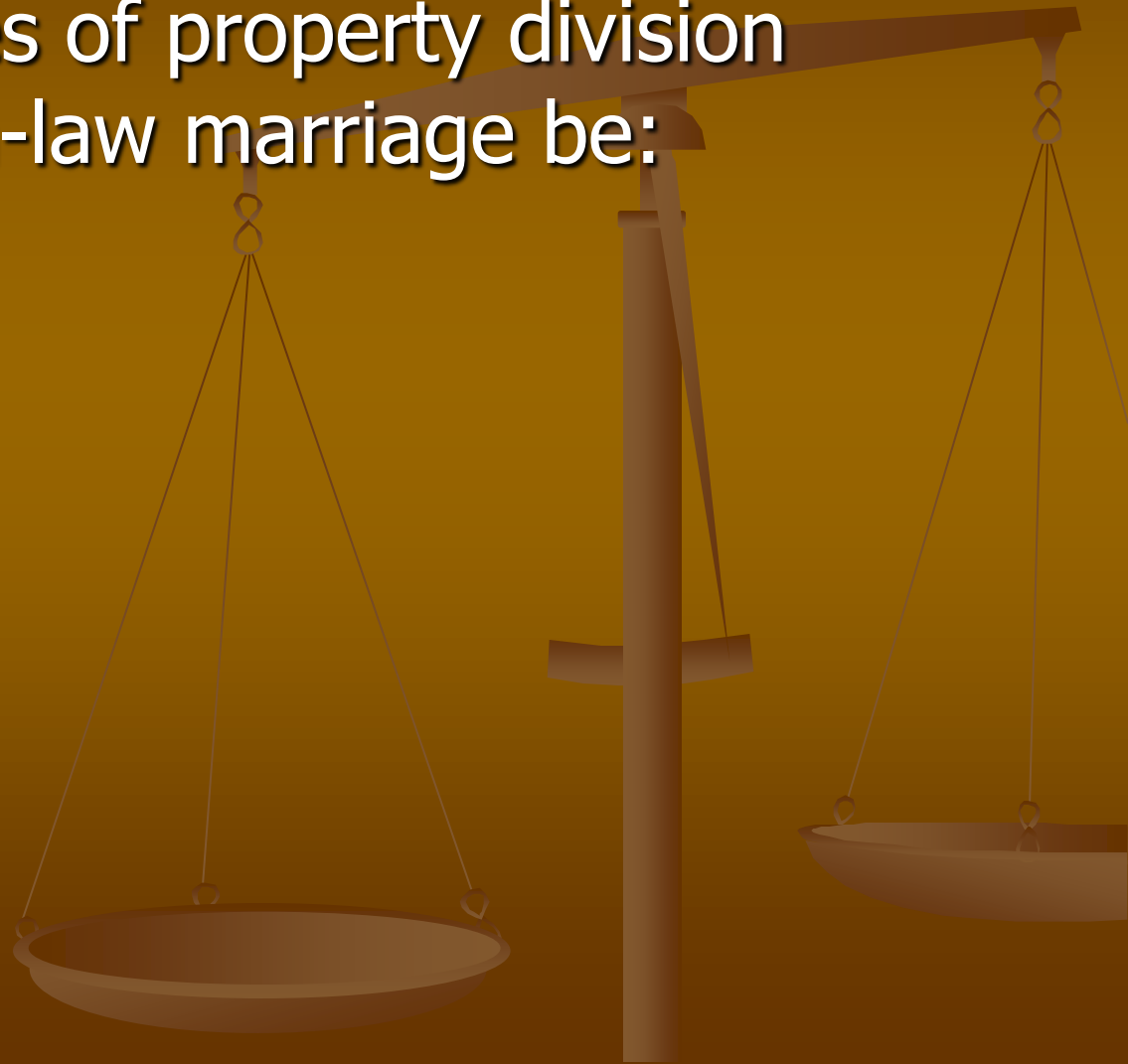
PIB Matrimonial Property Law

- The Matrimonial Property Law must address the use, occupancy and possession of FN Land and the division of interests in the land upon breakdown of marriage or common-law relationship.



How long should common-law be on-Reserve

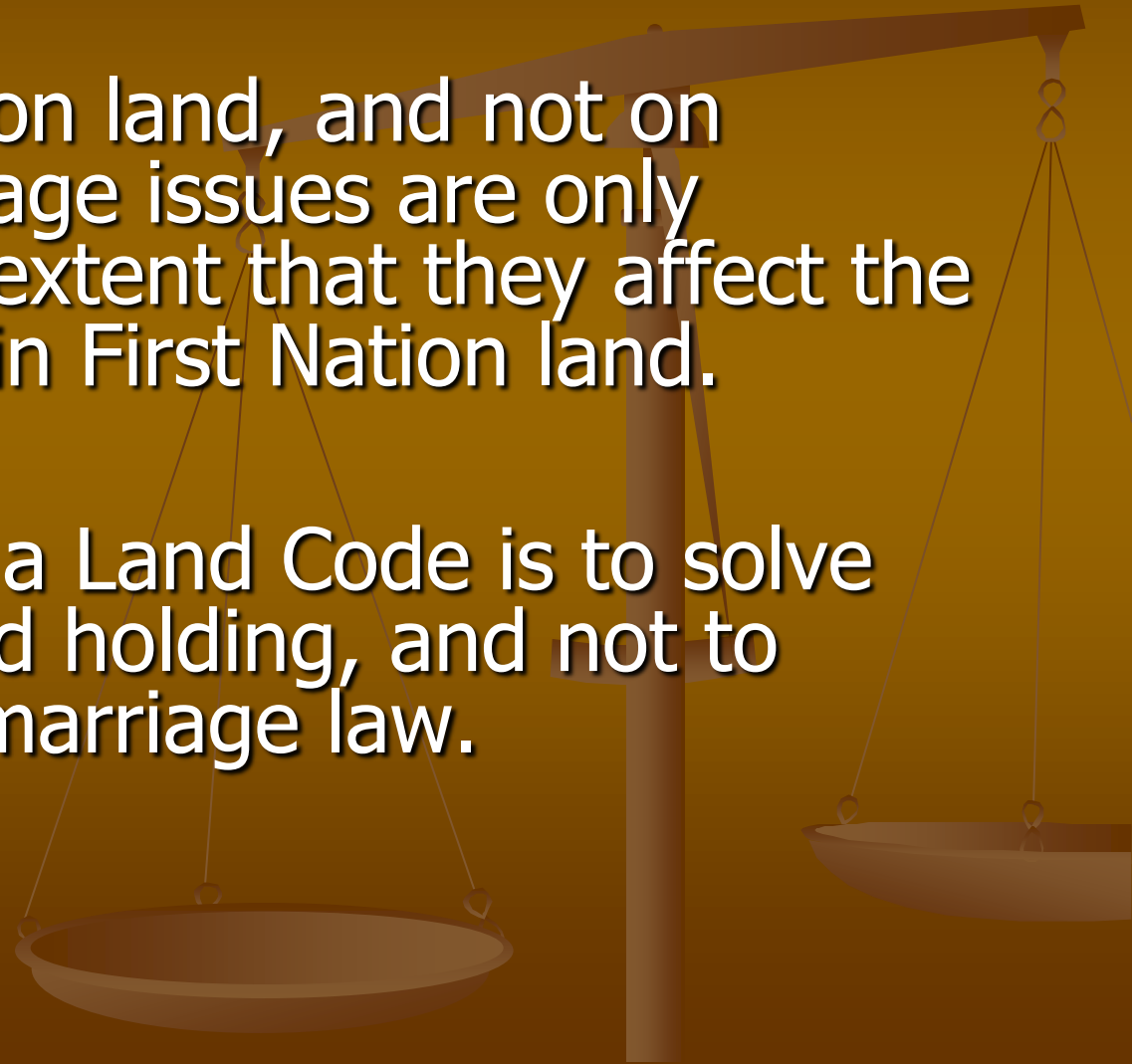
- For the purposes of property division should common-law marriage be:
 - One year?
 - Two years?
 - Five years?



Matrimonial Homes

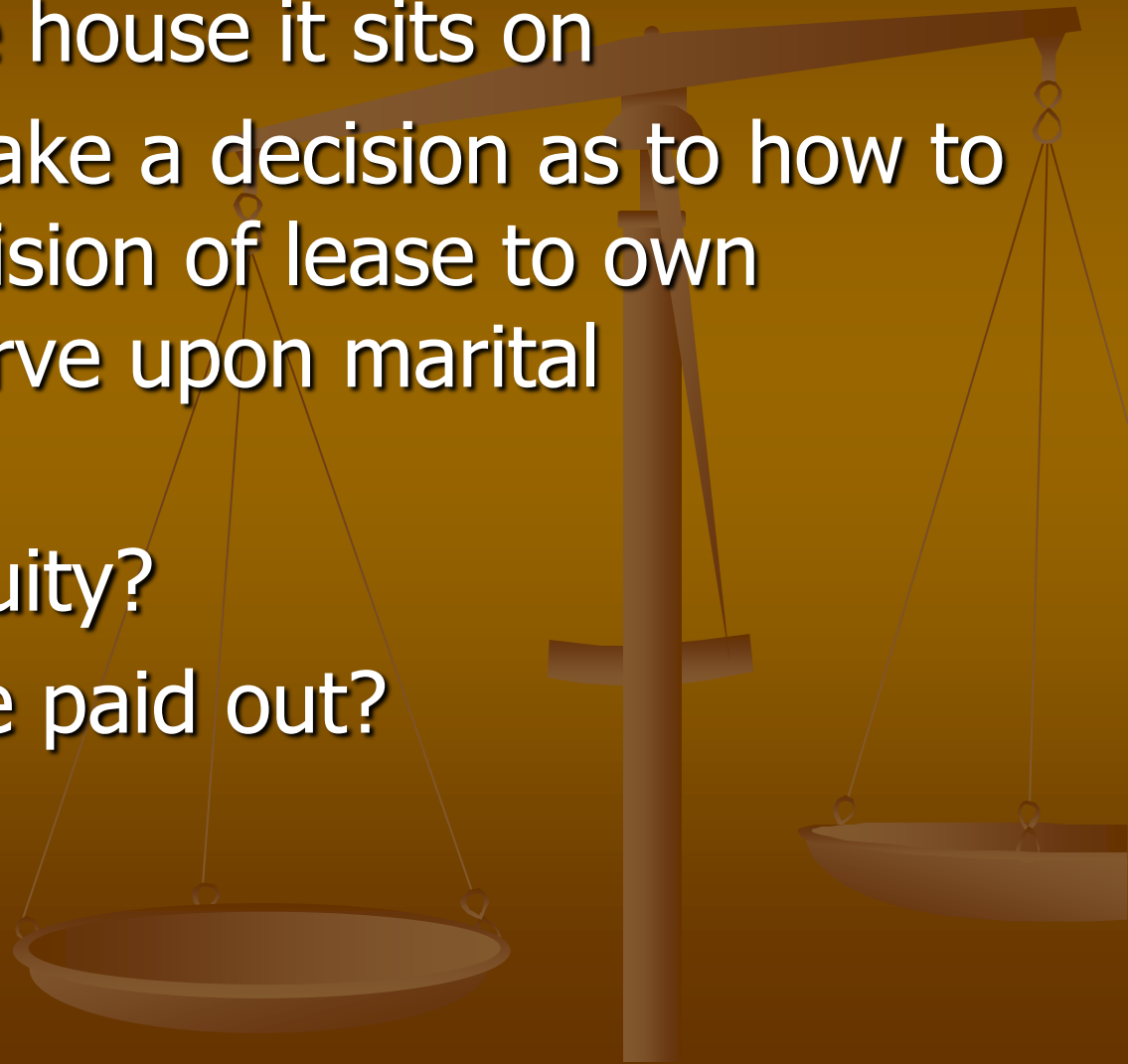
Principles

- The focus of is on land, and not on marriage. Marriage issues are only relevant to the extent that they affect the scope of rights in First Nation land.
- The purpose of a Land Code is to solve problems of land holding, and not to revise existing marriage law.

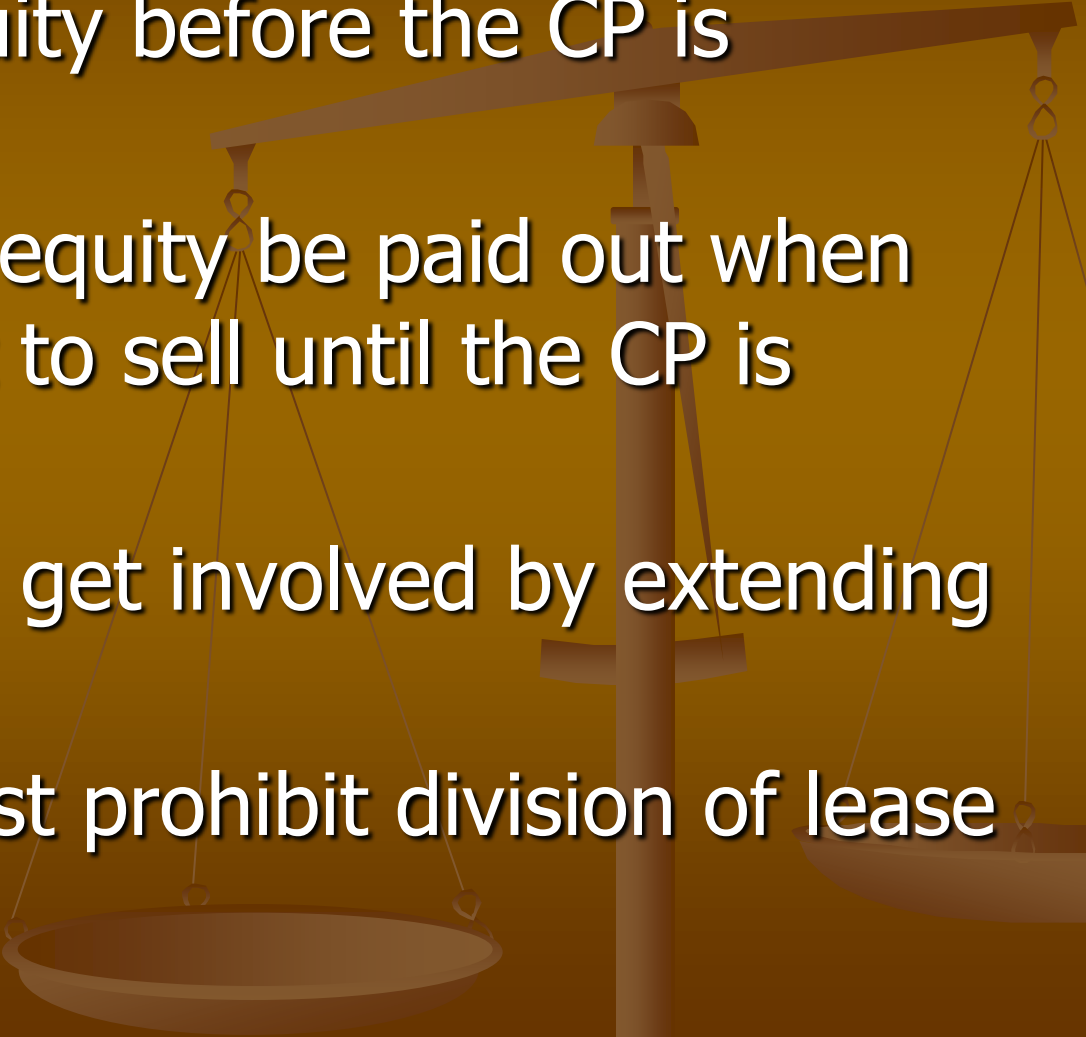


What is a Matrimonial Home

- CP land and the house it sits on
- PIB needs to make a decision as to how to manage the division of lease to own homes on-Reserve upon marital breakdown
- Is there any equity?
- How would it be paid out?



Lease to Own Homes

- Is there any equity before the CP is transferred?
 - How would any equity be paid out when there is no right to sell until the CP is issued?
 - Would the Band get involved by extending the mortgage?
 - Is it better to just prohibit division of lease to own homes?
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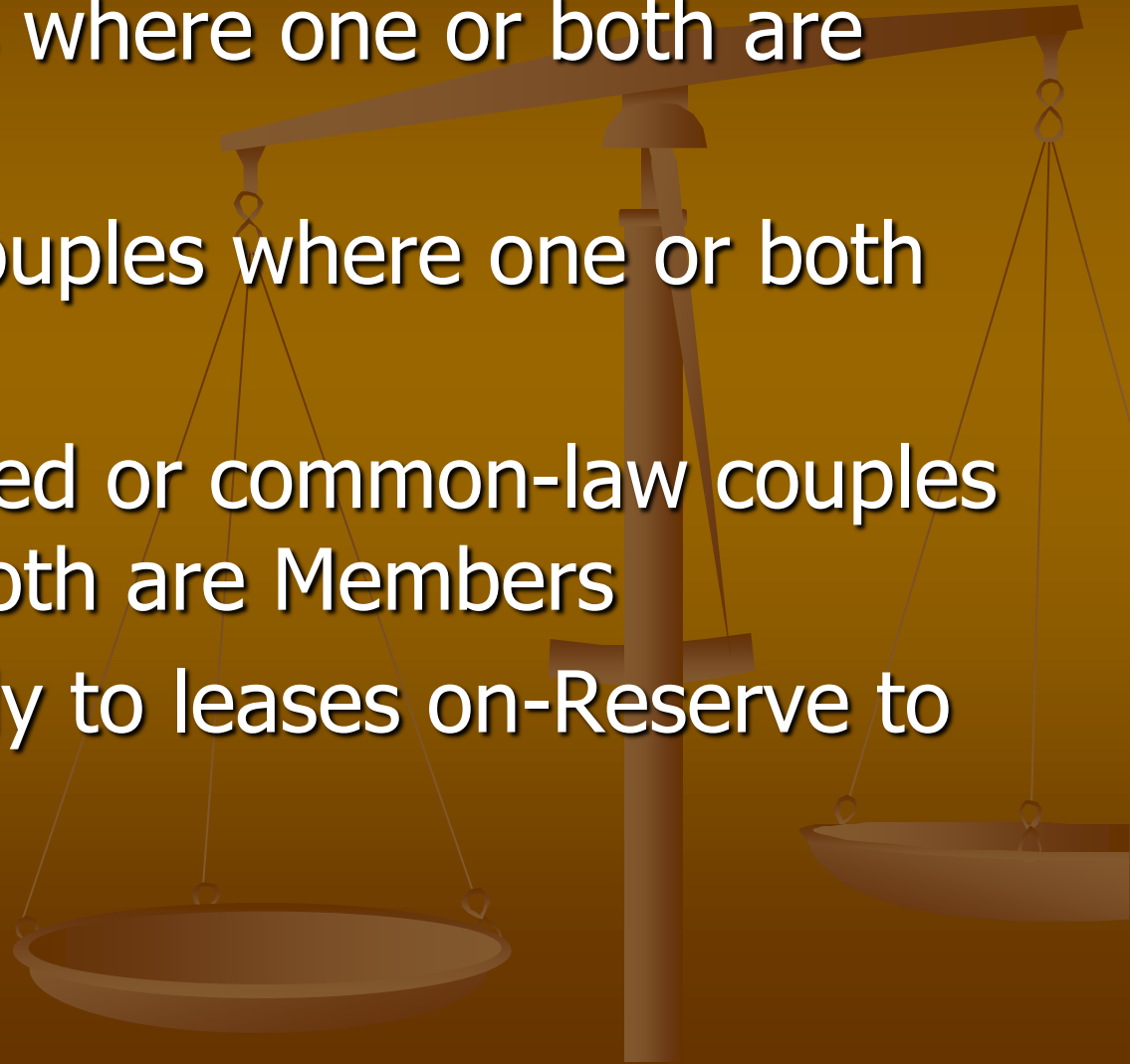
Matrimonial Homes

First Nations Approach generally:

- Rights of the children to stay in the home and community
 - Legal recognition of agreements between members (inter-Matrimonial contracts)
 - Ability of members to have access to courts
 - Ability of members to have access to mediation
 - Recognition of temporary interests if spouse with custody is not a member
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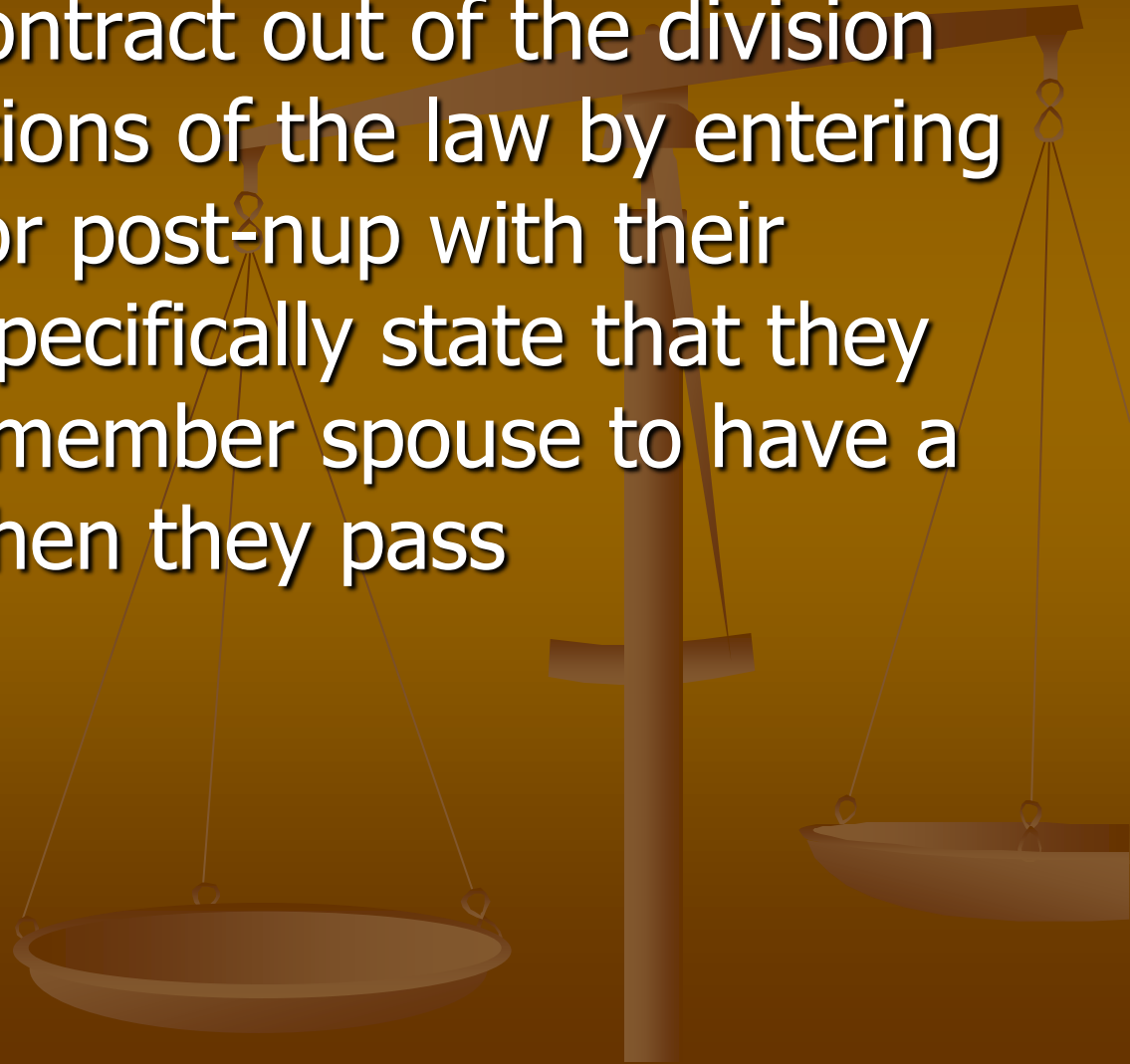
Who does it apply to?

- Married couples where one or both are Members
- Common-law couples where one or both are Members
- Same sex married or common-law couples where one or both are Members
- It does not apply to leases on-Reserve to non-members

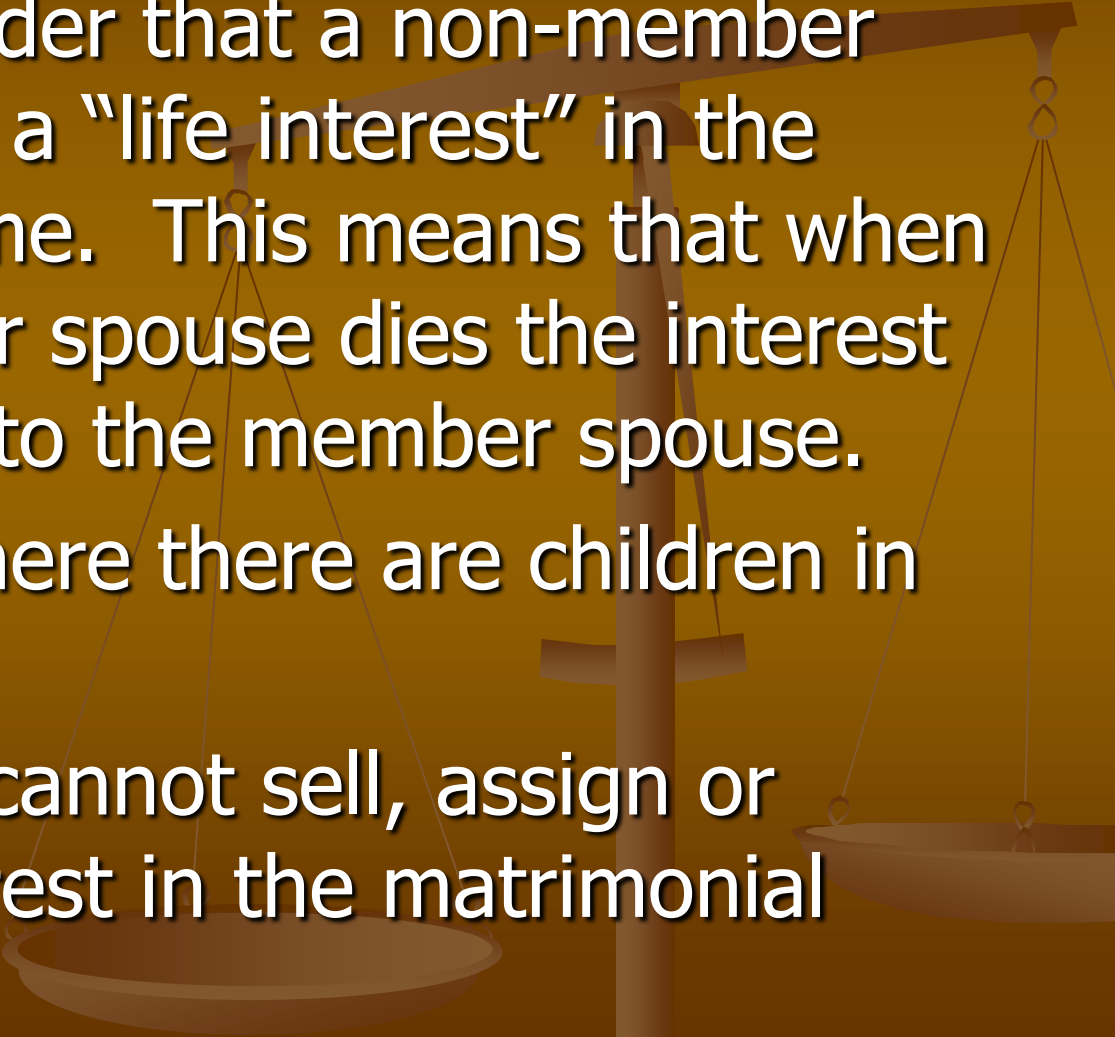


Matrimonial Contracts

- Members can contract out of the division of property sections of the law by entering into a pre-nup or post-nup with their spouse or can specifically state that they want their non-member spouse to have a “life interest” when they pass



Non-Member Interests in PIB Lands

- A court could order that a non-member spouse receives a “life interest” in the matrimonial home. This means that when the non-member spouse dies the interest will revert back to the member spouse.
 - Usually done where there are children in the home.
 - A non-member cannot sell, assign or transfer an interest in the matrimonial home.
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Access to Courts



- Can be used to apply the laws of the province in family relations matters
- Courts can provide to members:
 - (a) an order that an Interest in PIB Land be transferred to a Spouse absolutely, where permitted under this Law;
 - (b) an order that an Interest in PIB land be subject to a lease by one Spouse to the other Spouse for a term of forty-nine (49) years consistent with PIB law, subject to such terms and conditions as the court deems just in all the circumstances; or,
 - (c) an order that an Interest in PIB Land be subject to a lease by one Spouse to a third party for a term of forty-nine (49) years consistent with PIB law for the purposes of dividing the proceeds, subject to such terms and conditions as the court deems just in all the circumstances.

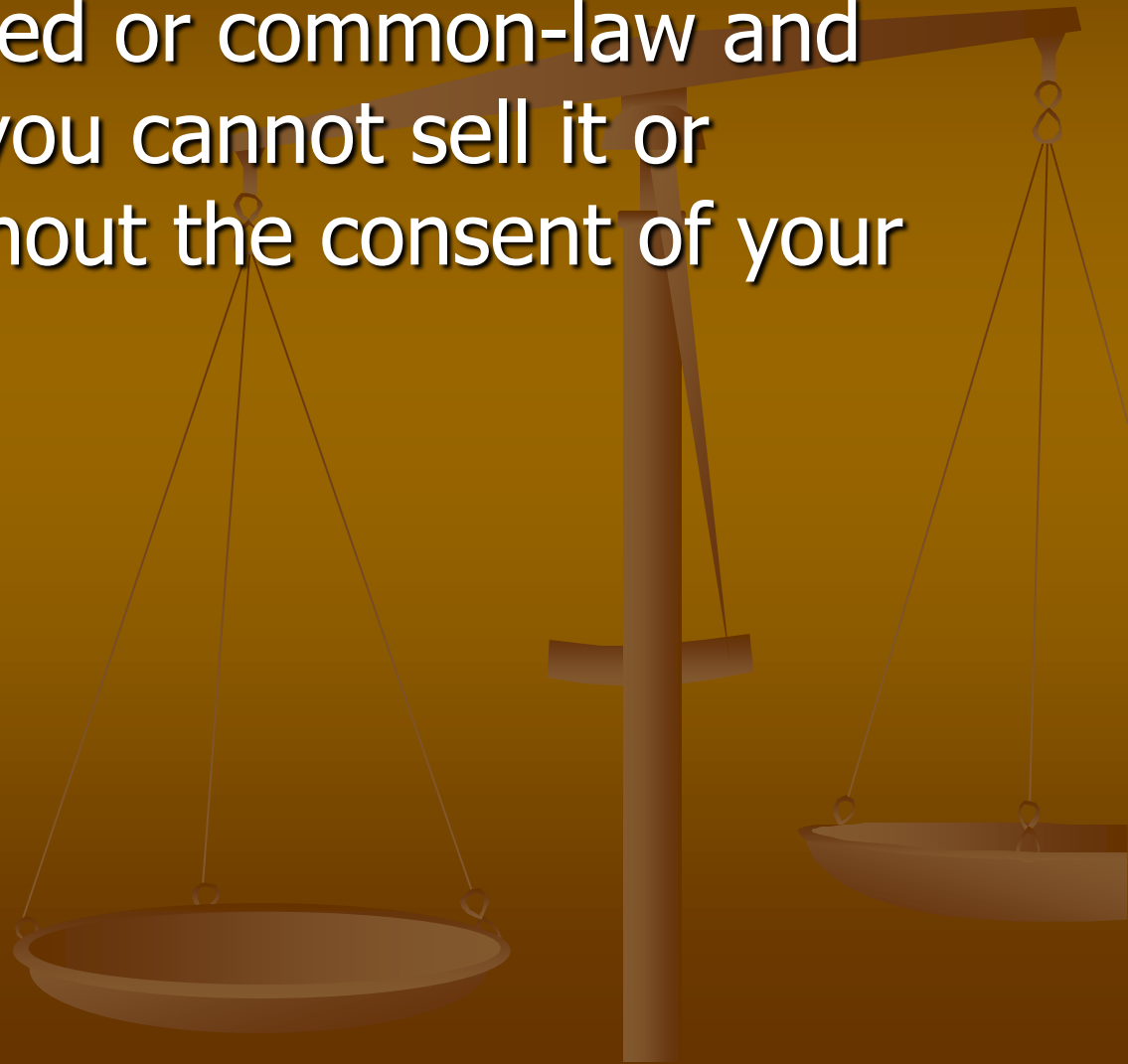
Access to Courts



- Where the Interest of a Spouse in PIB Land is held through a corporation, the court may order:
 - that Spouse to transfer shares in the corporation to the other Spouse; or,
 - the corporation to issue shares in the corporation to the other Spouse.
- An order will not be made under this Part which significantly impairs the operation of a business or farm on PIB Land unless there is no reasonable alternative method of achieving an equitable result between the Spouses.
- Where a proceeding has been commenced under this Part, and either Spouse dies before all issues relating to Interests in PIB Land have been disposed of by a court, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.

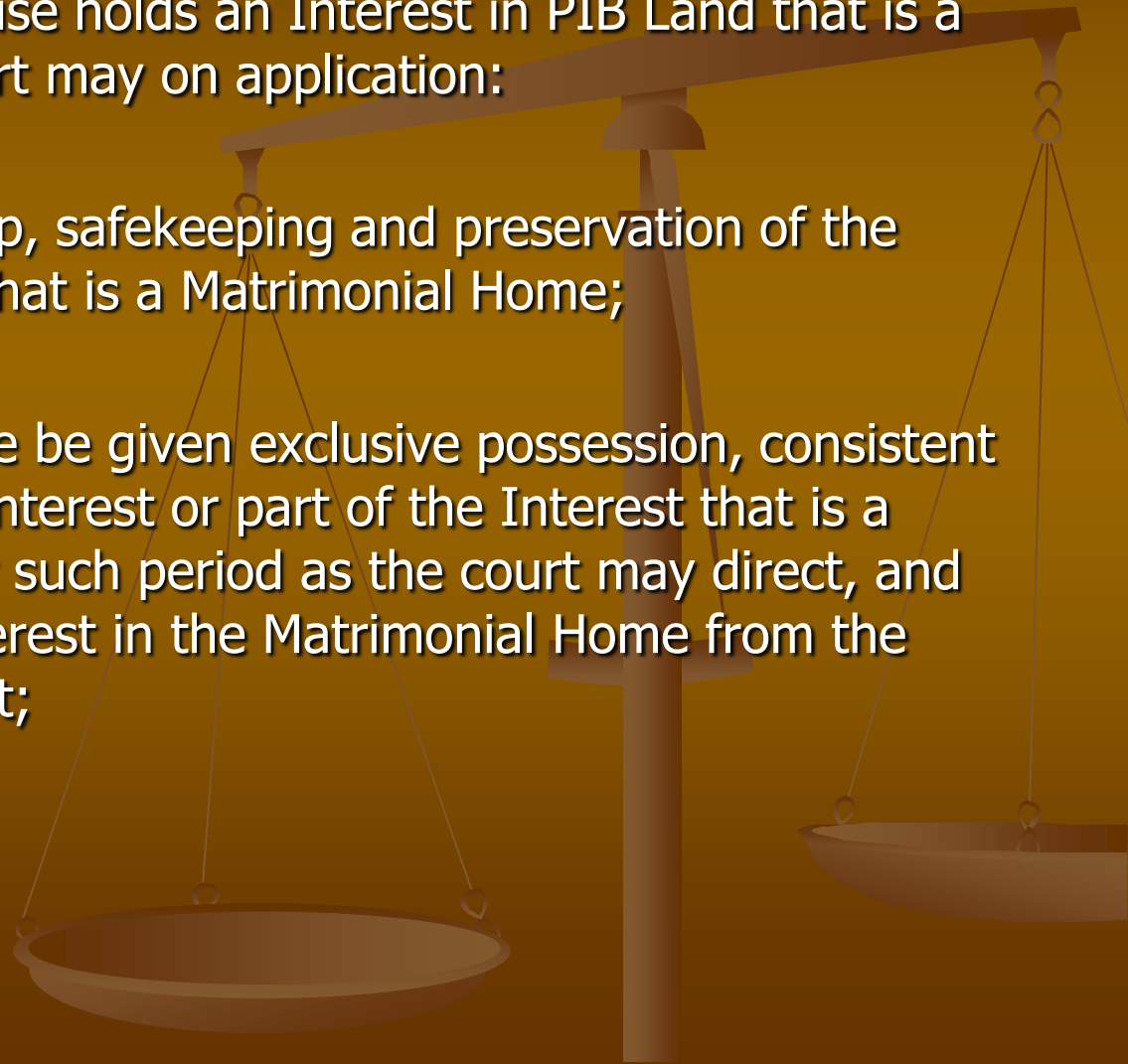
Access to Courts

- If you are married or common-law and you have a CP you cannot sell it or mortgage it without the consent of your spouse.



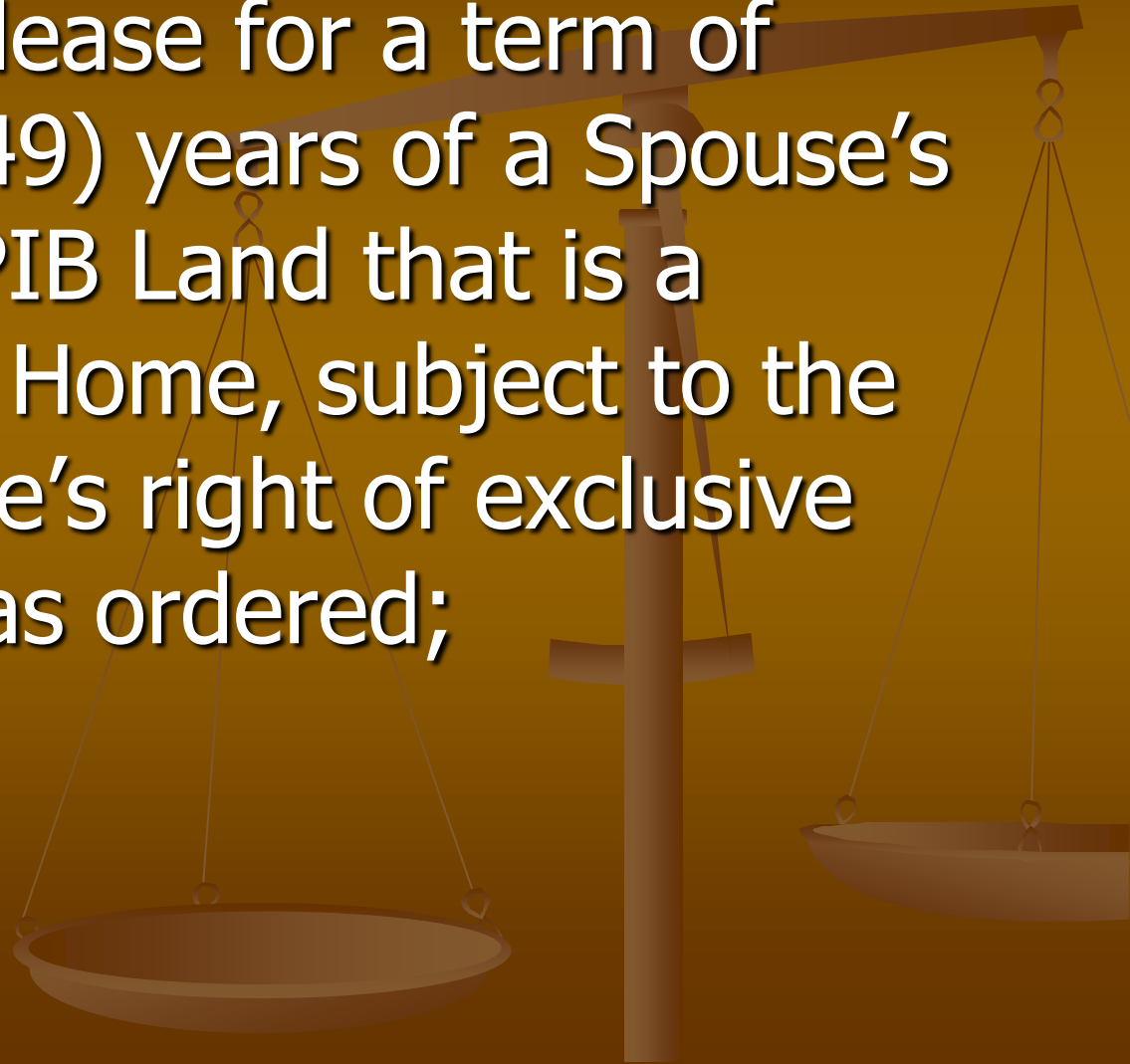
Access to Courts

- Regardless of which Spouse holds an Interest in PIB Land that is a Matrimonial Home, a court may on application:
 - order the delivering up, safekeeping and preservation of the Interest in PIB Land that is a Matrimonial Home;
 - direct that one Spouse be given exclusive possession, consistent with this law, of the Interest or part of the Interest that is a Matrimonial Home for such period as the court may direct, and release any other Interest in the Matrimonial Home from the application of this Part;



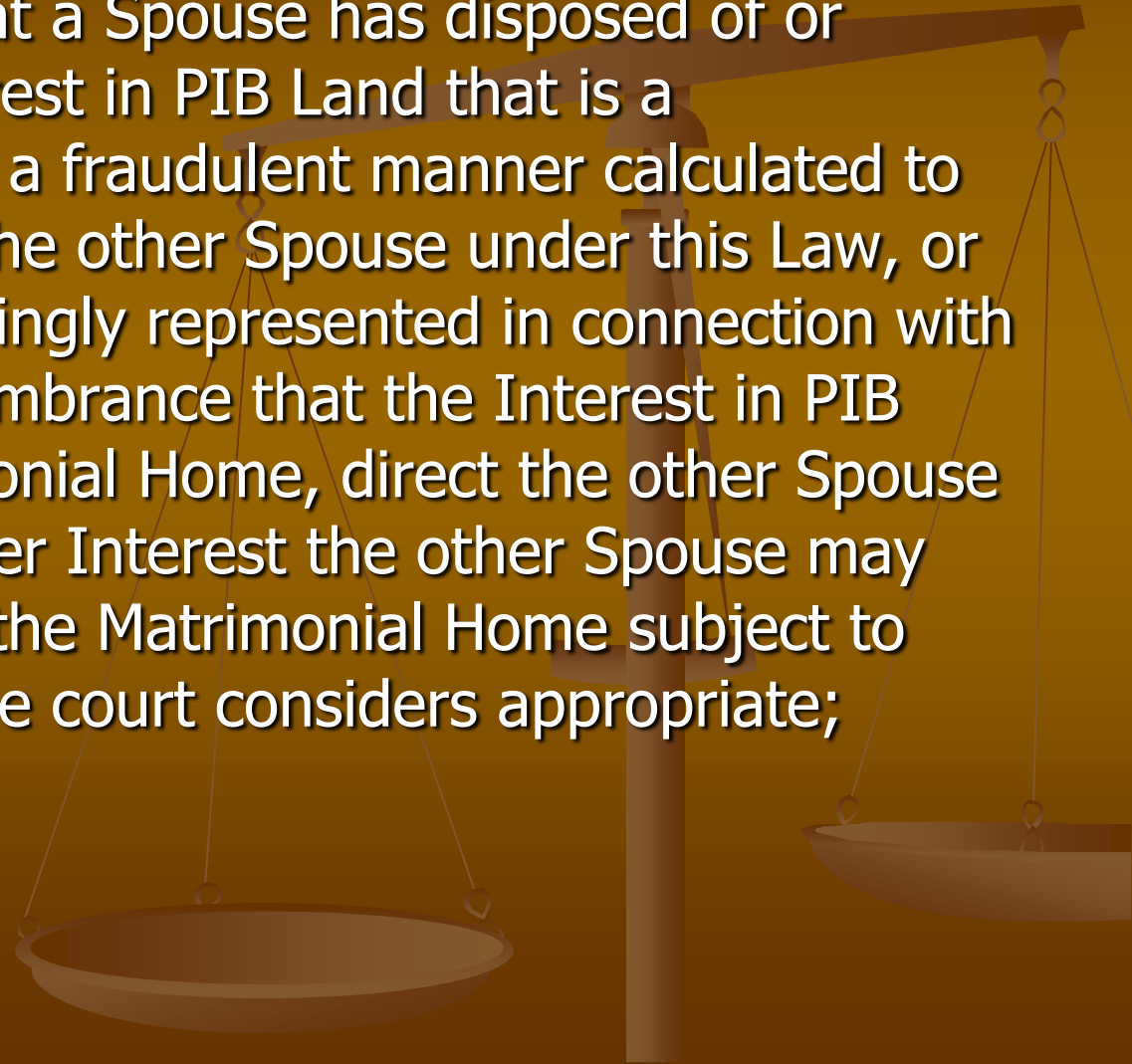
Access to Courts

- authorize a lease for a term of forty-nine (49) years of a Spouse's Interest in PIB Land that is a Matrimonial Home, subject to the other Spouse's right of exclusive possession as ordered;



Access to the Courts

- where it is shown that a Spouse has disposed of or encumbered an Interest in PIB Land that is a Matrimonial Home in a fraudulent manner calculated to defeat the rights of the other Spouse under this Law, or has falsely and knowingly represented in connection with a disposition or encumbrance that the Interest in PIB Land is not a Matrimonial Home, direct the other Spouse to substitute any other Interest the other Spouse may hold in PIB Land for the Matrimonial Home subject to such conditions as the court considers appropriate;

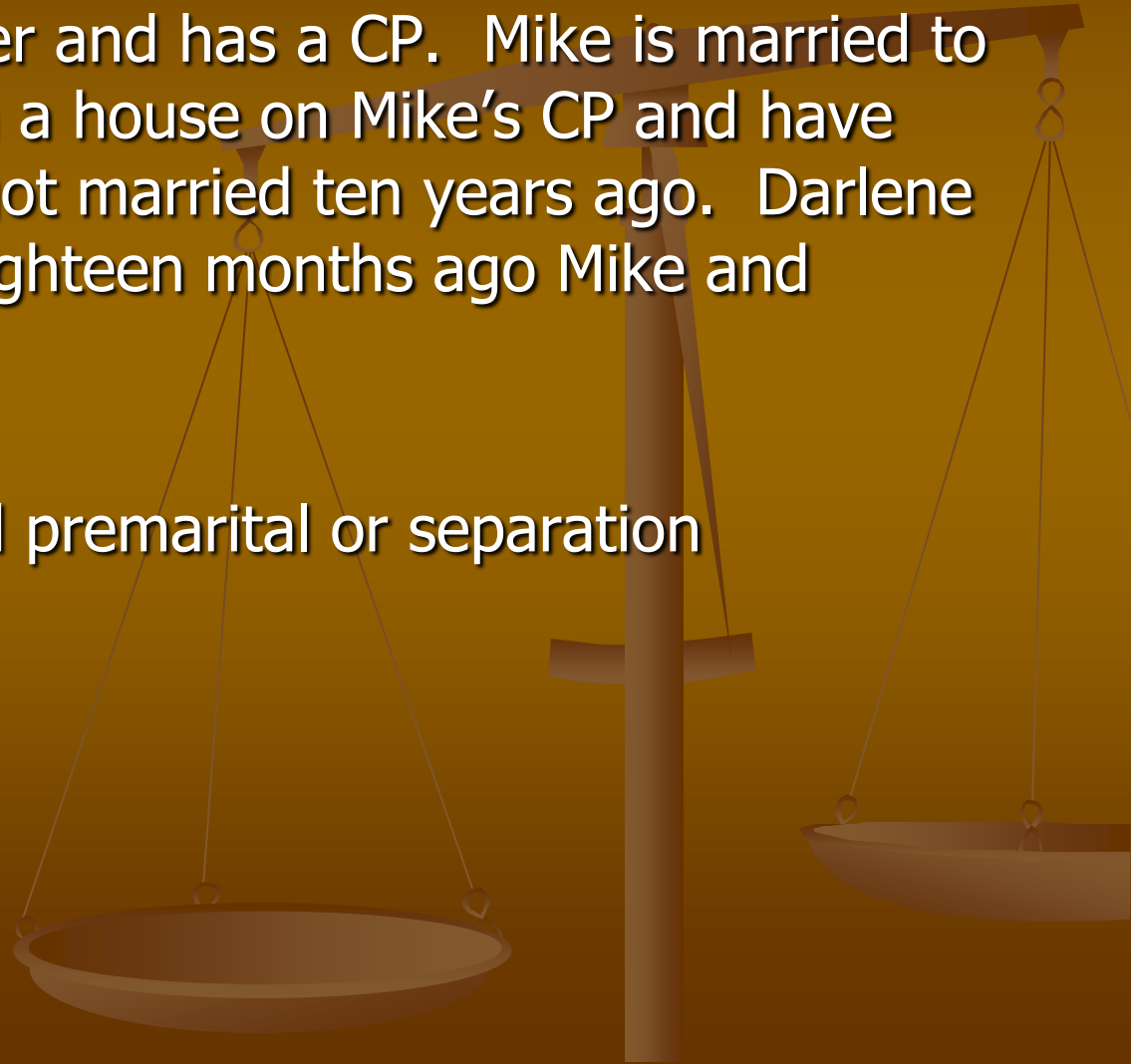


General – Gifts and Inheritances of Land

- An Interest in PIB Land received by way of gift or inheritance by only one Spouse from a third person who is a family member, or by only one Spouse together with one or more members of that family, will be deemed, subject to proof to the contrary, to have been transferred with the intention that the Interest should continue to be held within that family exempt from any claim of the other Spouse, but the Interest, the income from the Interest and the value of the Interest are to be excluded from the transferee Spouse's net family property.
- This does not apply with respect to an Interest in PIB Land that is a Matrimonial Home.

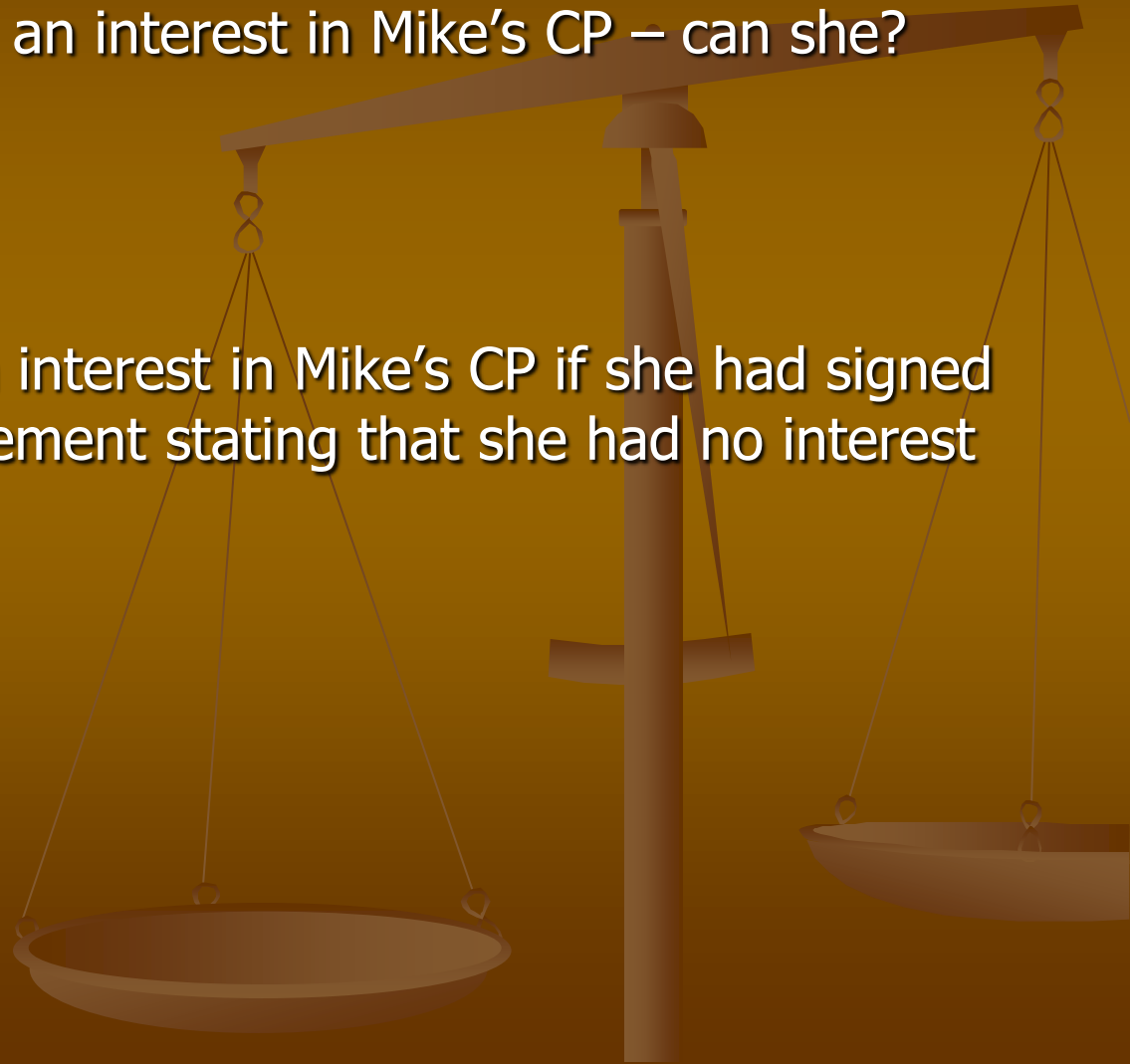
Scenario One

- Mike is a PIB member and has a CP. Mike is married to Darlene. They live in a house on Mike's CP and have done so since they got married ten years ago. Darlene is not a member. Eighteen months ago Mike and Darlene separated.
- They have no signed premarital or separation agreement..



Questions

- Darlene wants to claim an interest in Mike's CP – can she?
- Could Darlene claim an interest in Mike's CP if she had signed a valid premarital agreement stating that she had no interest in the property?



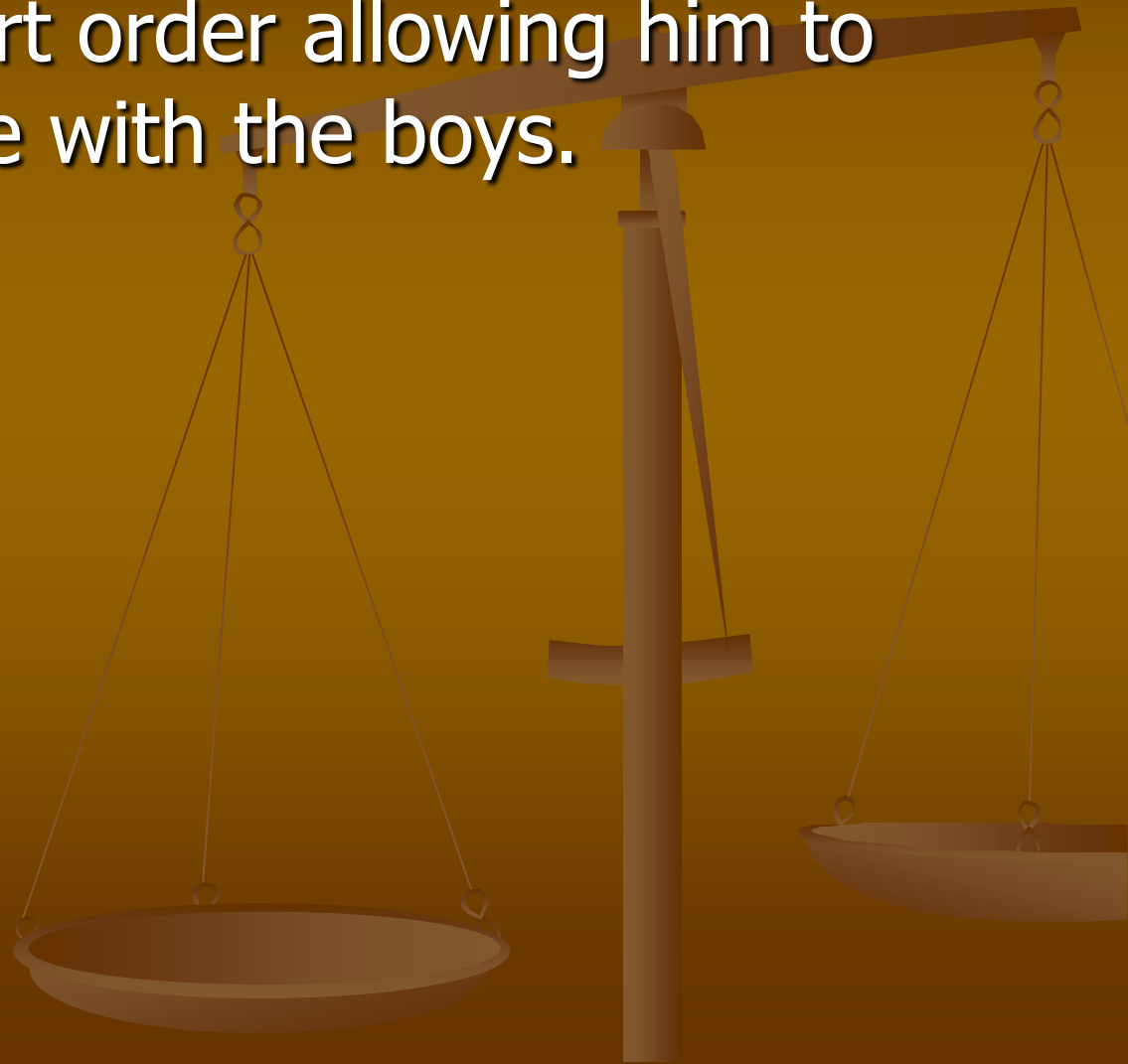
Scenario 2

Helen is a PIB member and has CP. Helen is married to Bill. They live in a house on Helen's CP and have done so since they got married twelve years ago. Bill is not a member. They have two boys together: Devon (8) and Darryl (6). Both boys are PIB members.

Two years ago Helen and Bill separated. Helen moved out while Bill, a stay-at-home father, stayed in the house with the boys. Bill takes care of Devon and Darryl Monday to Friday and Helen is with the boys on the weekends. They have no signed premarital or separation agreement.

Question

- Bill wants a court order allowing him to live in the house with the boys.
- Can he get it?



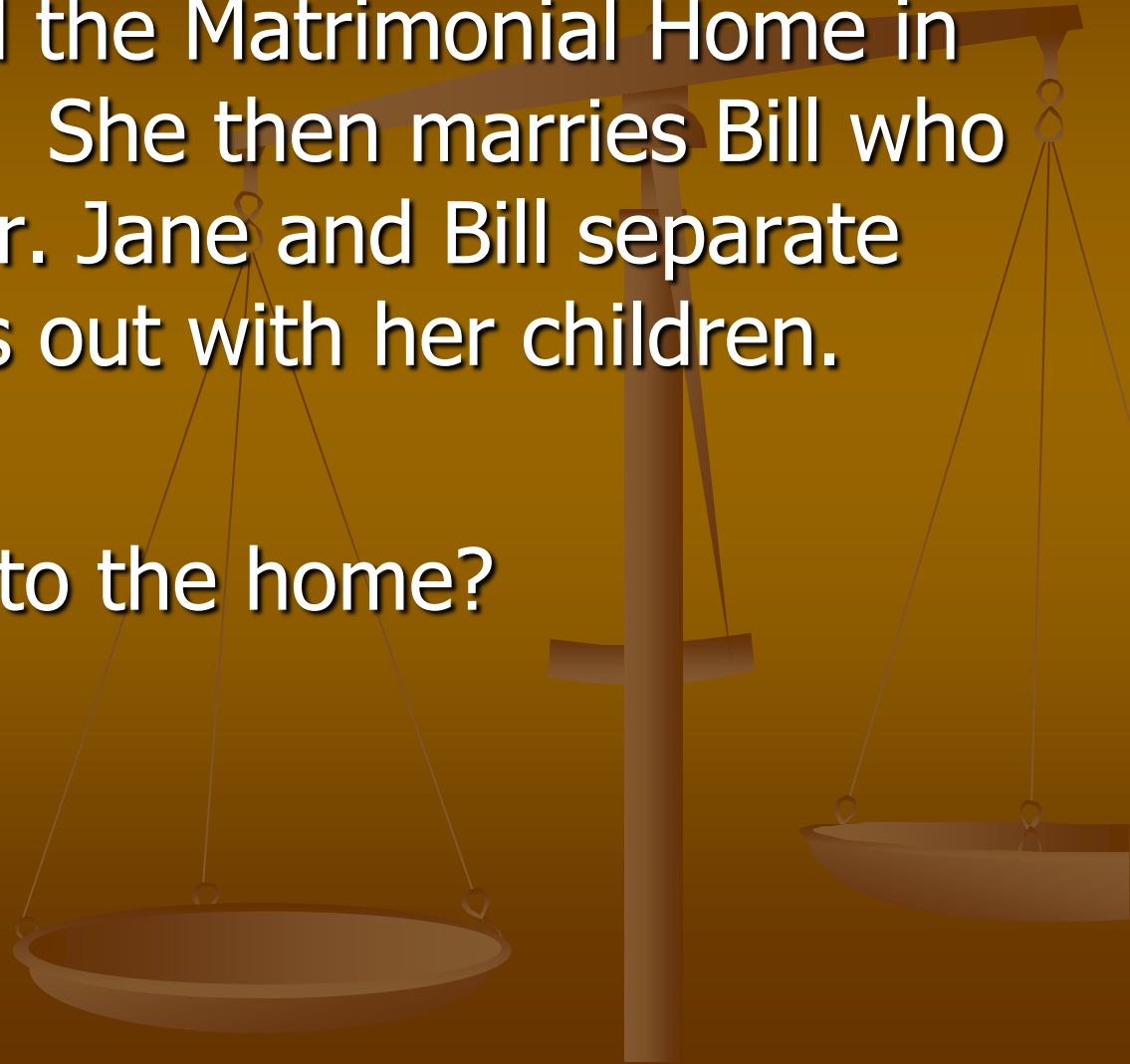
Scenario 3

John and Jane are divorcing. They live on John's CP on-Reserve. Jane is not a member. John and Jane have children together, and the children are not PIB members. Jane has full custody of the children.

- Who has rights to the Matrimonial Home?

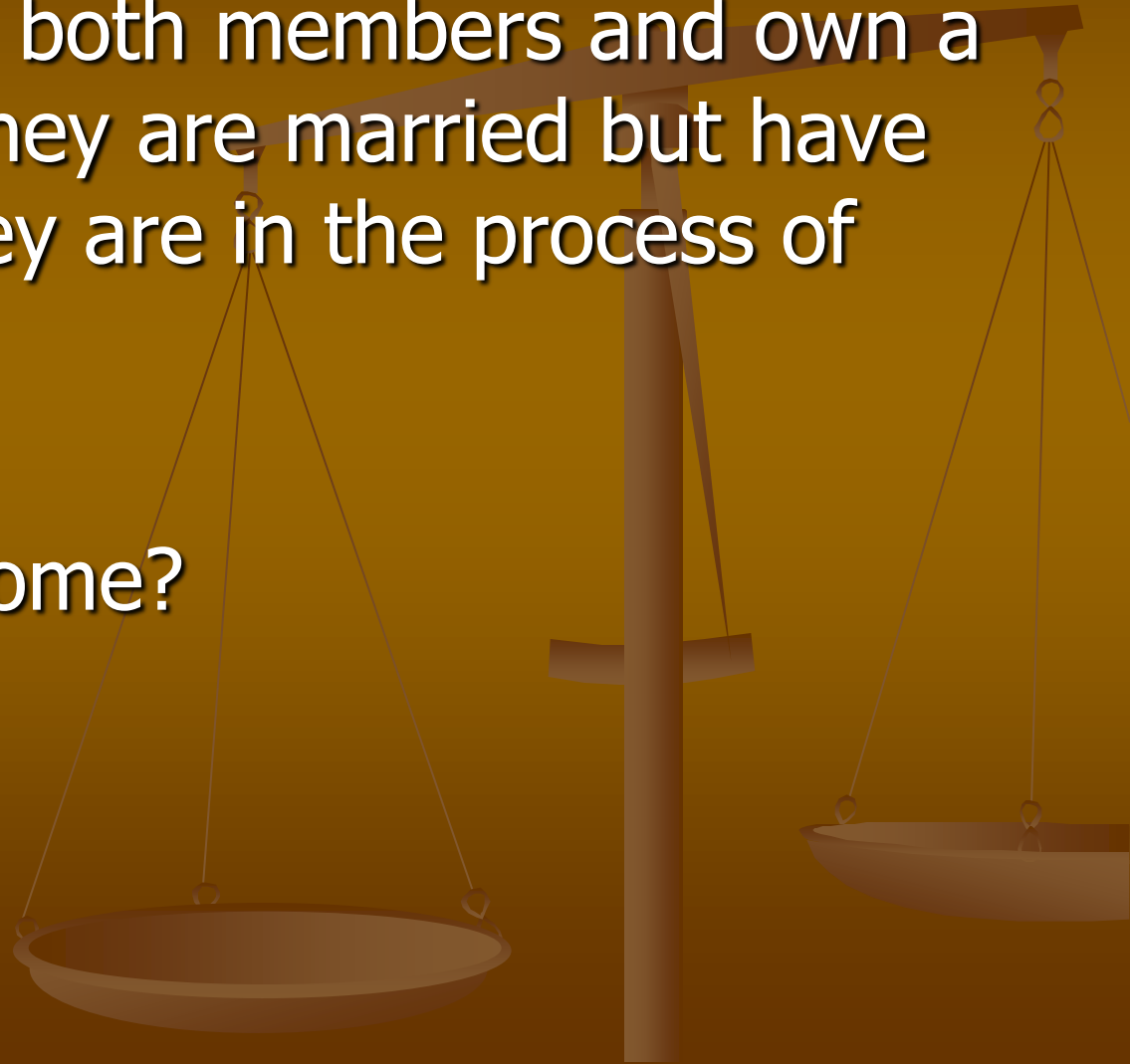
Scenario 4

- Jane is awarded the Matrimonial Home in Scenario Three. She then marries Bill who is a PIB member. Jane and Bill separate and Jane moves out with her children.
- Who has rights to the home?



Scenario 5

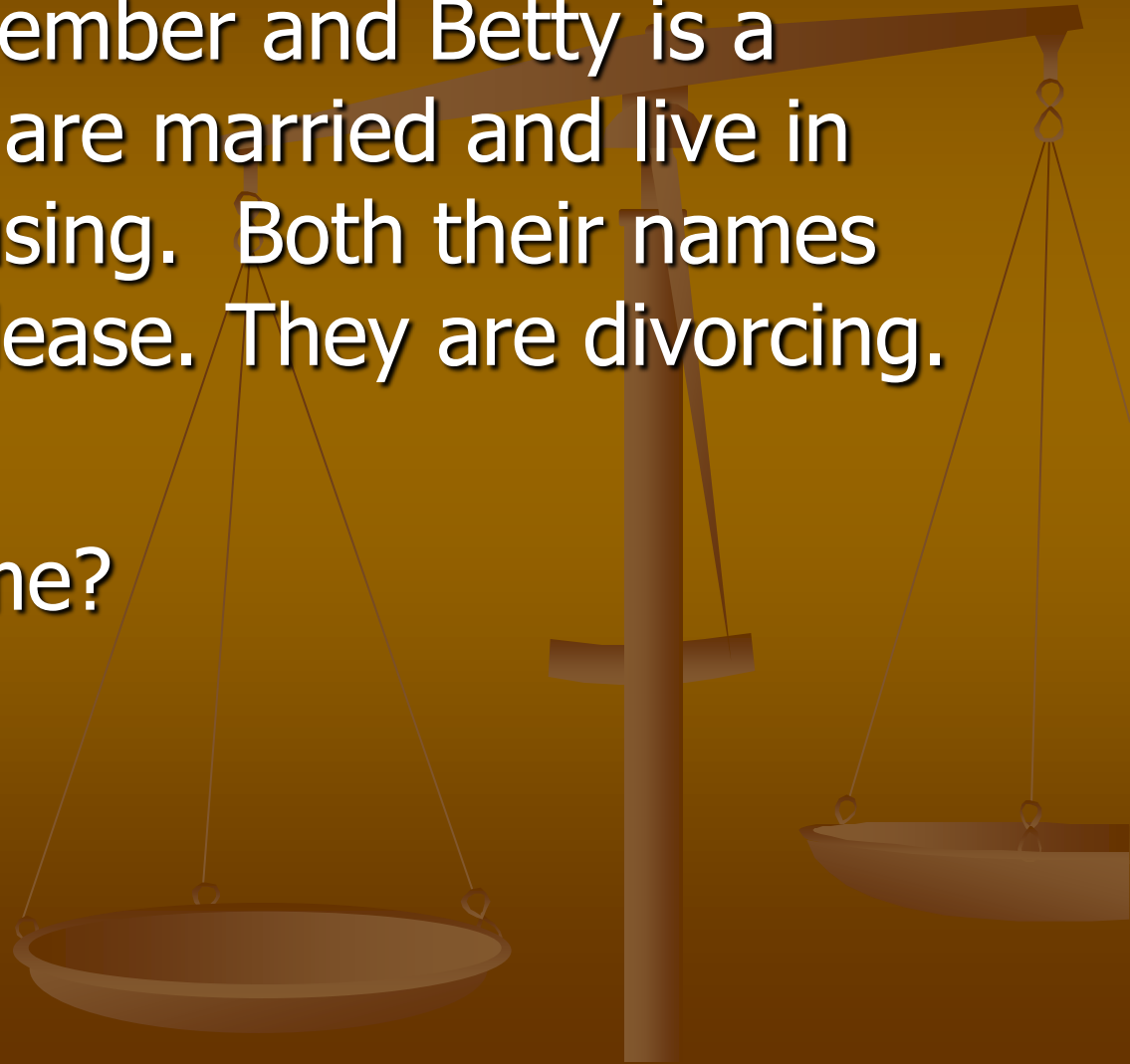
- Bill and Sue are both members and own a CP together. They are married but have no children. They are in the process of divorcing.
- Who gets the home?



Scenario 6

- Fred is a non-member and Betty is a member. They are married and live in Band rental housing. Both their names are on the sub-lease. They are divorcing.

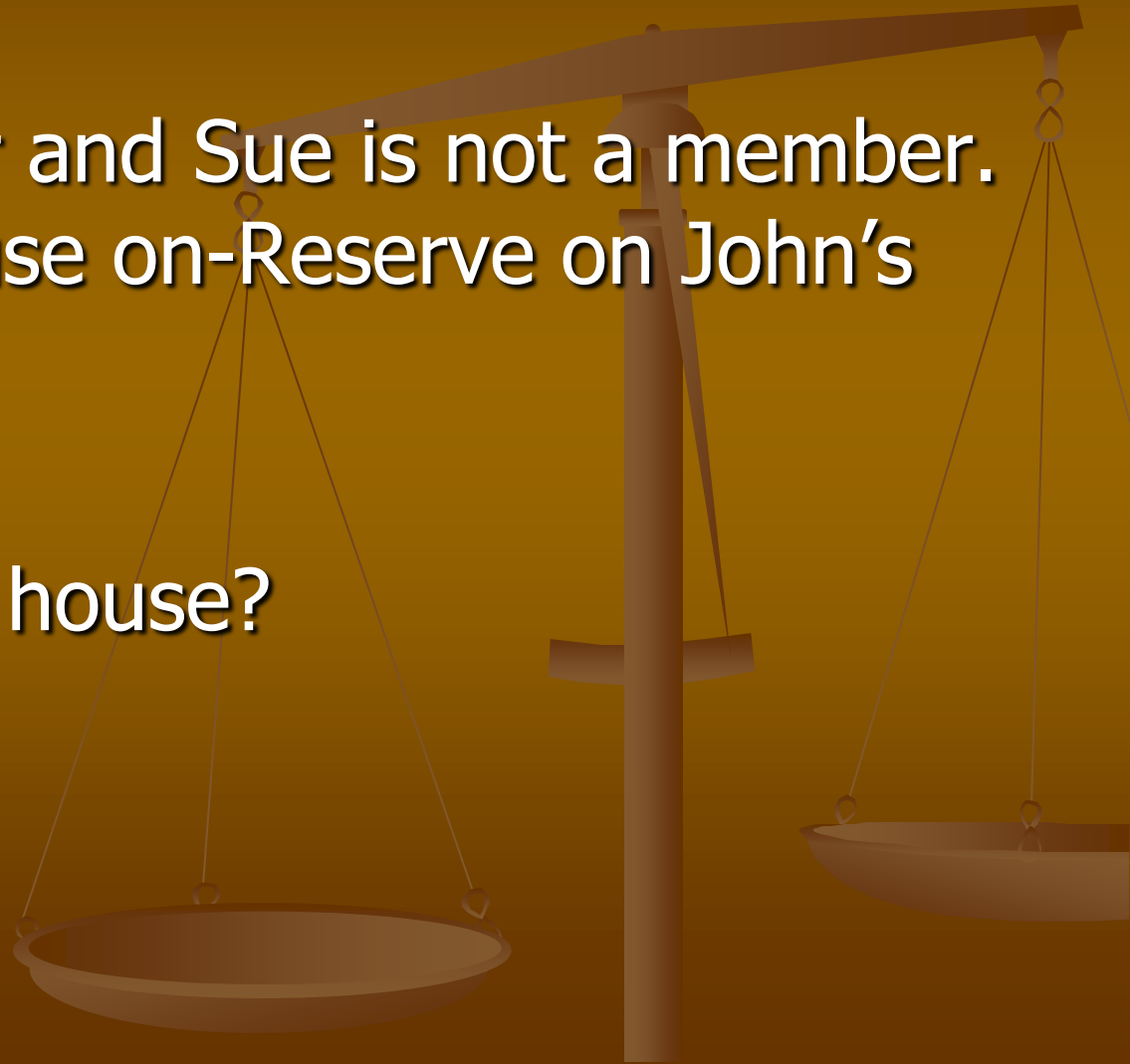
Who gets the home?



Scenario 7

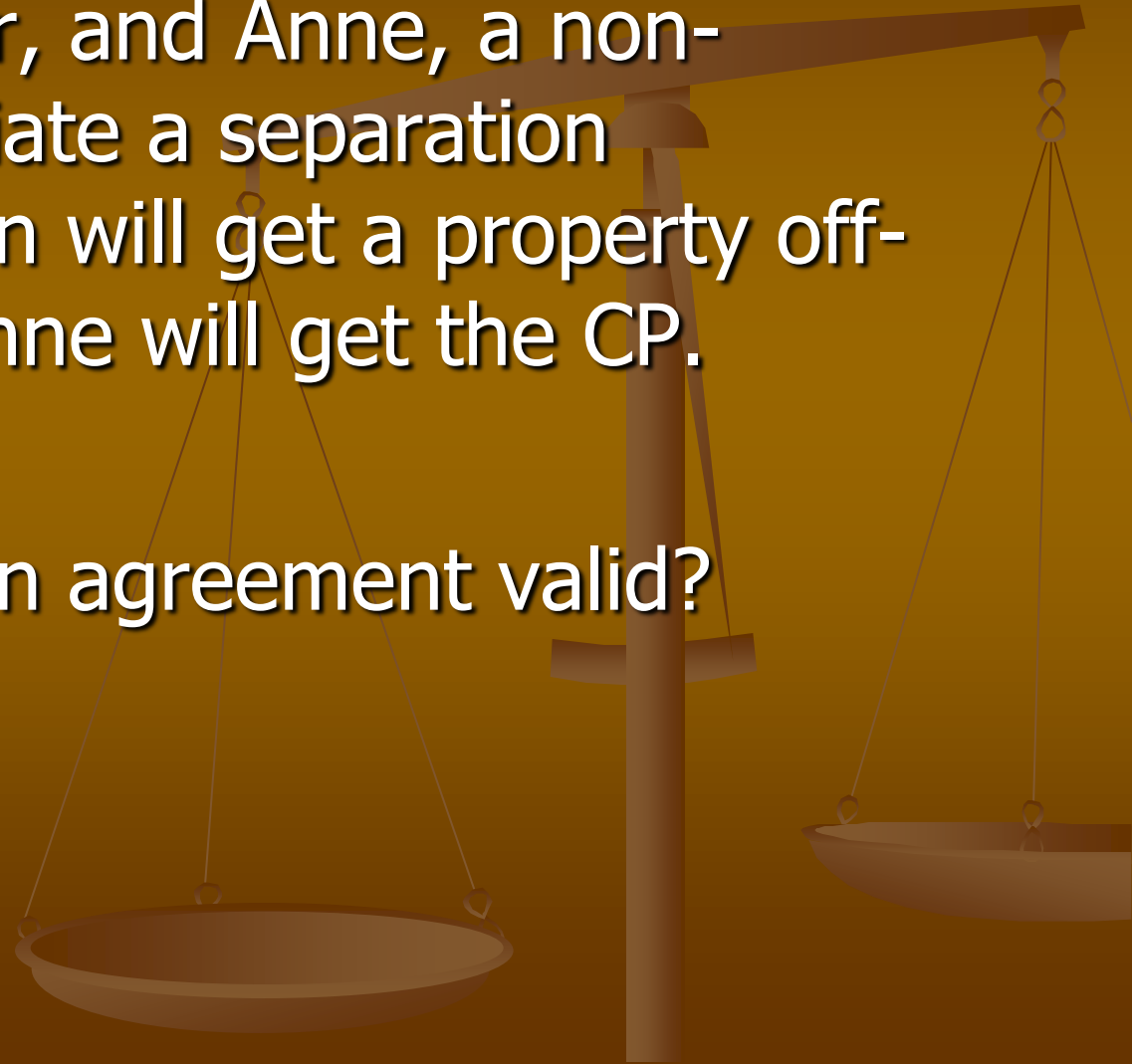
John is a member and Sue is not a member.
They live in a house on-Reserve on John's
CP. John dies.

Does Sue get the house?



Scenario 8

- John, a member, and Anne, a non-member, negotiate a separation agreement. John will get a property off-Reserve, and Anne will get the CP.
- Is the separation agreement valid?



Questions?

