

## The changing understanding of women's rights

The position of women under English law before the Married Women's Property Act 1882 was truly disturbing.<sup>1</sup> A wife became "the shadow of her husband" on marriage with the effect that all of the woman's property passed absolutely to her husband and became in law his property. If you have read Jane Austen's novel *Persuasion* you will have encountered the heroine Anne who must resist the advances of unctuous Mr Elliot who is a gold-digger seeking a rich wife so that his own penury can be remedied by acquiring ownership of all of her money after marrying her. In such circumstances, many women would be abandoned by unscrupulous husbands who spent all of their wives' money and kept mistresses. In this sense equity came to the rescue of these women by holding "their" property on well-drafted property so that roguish husbands could not steal it away from them. Equity was consequently considered to be a woman's protector. It was not until important decisions in the late 20<sup>th</sup> century (such as *Williams & Glyn's Bank v Boland*<sup>2</sup>) that wives were recognised as having distinct rights in matrimonial property. Even among the seemingly enlightened judiciary of the 20<sup>th</sup> century, there were some very patronising and out-dated ideas in play. Lord Denning, who is for many people a sort of judicial saint, considered that:

'No matter how you may dispute and argue, you cannot alter the fact that women are different from men. The principal task in life of women is to bear and rear children: and it is a task which occupies the best years of their lives. The man's part in bringing up the children is no doubt as important as hers, but of necessity he cannot devote so much time to it. He is physically the stronger and she the weaker. He is temperamentally the more aggressive and she the more submissive. It is he who takes the initiative and she who responds. ...'<sup>3</sup>

It goes on in that vein for some time. And he is generally thought to be one of the good guys!

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<sup>1</sup> Cretney, *Family Law in the Twentieth Century* (Oxford, 2003) 92 *et seq.*

<sup>2</sup> [1981] AC 487.

<sup>3</sup> Denning, *The Due Process of Law* (Butterworths, 1980), at p.194.