

De Facto Partnerships In Samoa

By Gemma Nelson

ISSUE

- Lack of legislation on this topic means Samoa relies on common law
- This paper is only concerned with what happens when a de-facto relationship breaks down.

OUTLINE

This presentation will look at the legal status of de-facto partners in three (3) areas.

1. Division of property
2. Custody of Children
3. Intestate Succession and Probate Proceedings

It will conclude with suggestions for law reform based on the *Fiji Family Law Act 2003* and the *New Zealand Property Relationship Act 2001*

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**DIVISION OF
PROPERTY**

DIVISION OF PROPERTY

- ❖ Legislation: *Property Law Act 1975*
 - De facto partners only have the rights afforded to joint tenants under this Act
 - Joint tenancy rights arise when couples purchase property together (both names on title)
 - Undivided interests in the whole of the property and rights in survivorship and any dealings with the land must be carried out with the consent of all parties.

CONSTRUCTIVE TRUST?

- The case of *Elisara v Elisara* [1994] WSSC
 - Involved a married couple
 - Court held that in the absence of evidence of an actual financial contribution there will be no constructive trust
 - However, the Divorce and Matrimonial Causes Ordinance has since been amended to include constructive trusts for married couples
- It is unlikely that courts would treat de facto partners any better than it treated a married couple in respect of establishing a constructive trust



**CUSTODY OF
CHILDREN**

CUSTODY OF CHILDREN

❖ Infants Ordinance 1961

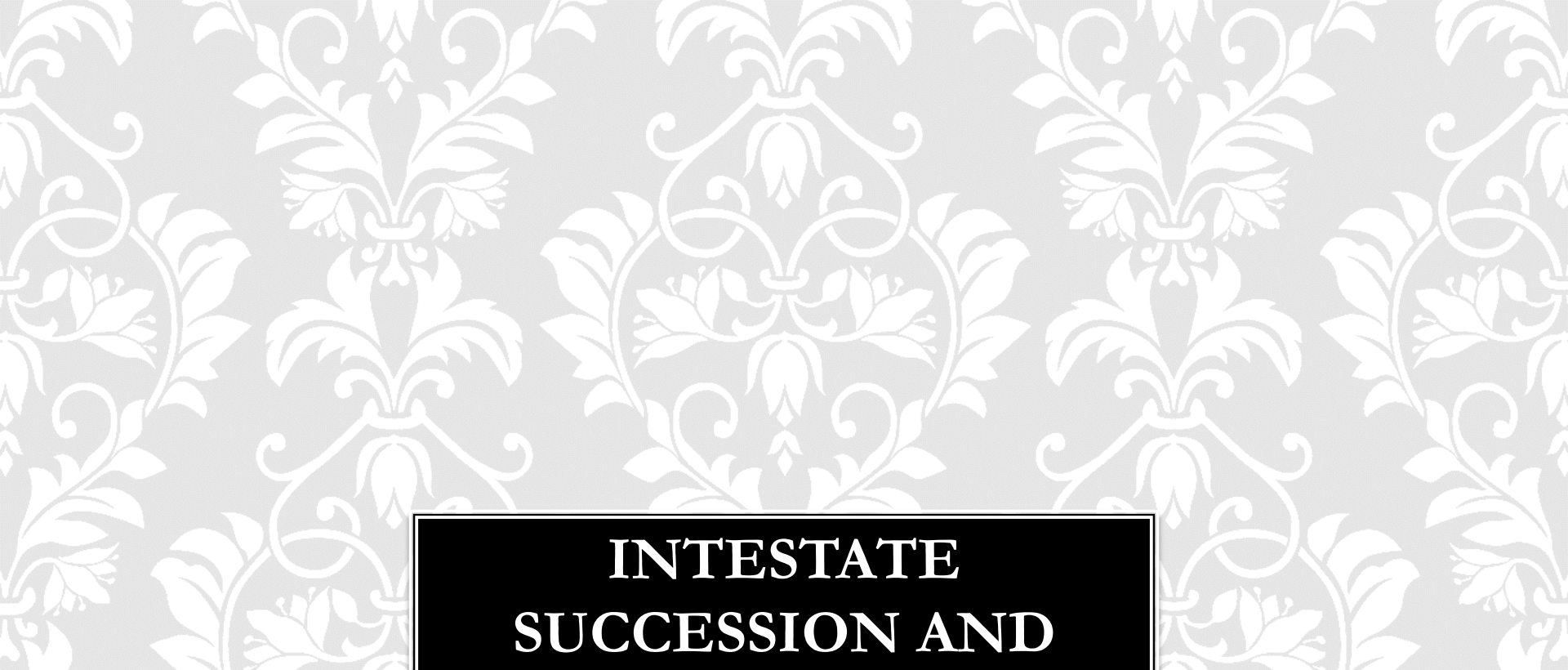
- Section 3- Paramount importance is the Welfare of the Child
- Section 4(1)- Either parent can apply
- Section 4(2)- Any other interested adult can also apply

❖ Maintenance and Affiliation Act 1967

- Section 12- Non-supporting parent can be ordered to pay child maintenance
- Section 12A-Power of Court to make custody orders

CUSTODY OF CHILDREN

- Custody claims are not affected by whether or not parties were married – what is important is parentage
- Child maintenance orders are not affected by whether or not parties were married - what is important is parentage
- De facto partners can seek custody and child maintenance if the relationship breaks down

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**INTESTATE
SUCCESSION AND
PROBATE
PROCEEDINGS**

STOWERS V STOWERS

[2010] WSSC 30

Peter Stowers
(Died intestate in
1996)

Makerita Stowers
Alice Stowers
**Legal Wife & Adopted
Daughter**

Vaoita Stowers
Aneti, Mercy and Peter
Stowers
**De facto wife and 3
children adopted out**

LAW

- ❖ S 44 *Administration Act* 1975 and s 10 of the *Infants Ordinance* 1961
 - The legislation in question had been adopted from New Zealand
 - The case of *Re O (deceased)* [1975] 1 NZLR 444 applied and took the view that a “wife” in succession proceedings referred only to a legally married wife

APPLICATION

- Only the legally married wife could claim from the Estate
- “Issue” only refers to children born or adopted during legal marriage.

SO WHAT HAPPENS?

Peter Stowers
(Died intestate in
1996)

Makerita Stowers
Alice Stowers
**Are the lawful
beneficiaries**

Vaoita Stowers
Aneti, Mercy and Peter
Stowers
**Have no claim to the
estate**

This case is currently being appealed in the Supreme Court. Leave was granted on the 7th of May 2012 for this application.

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POSSIBLE LAW REFORMS

FAMILY LAW ACT FIJI
2003

This Act allows for de-facto partnerships to divide property after the relationship breakdown but it does not specify the period of cohabitation needed to qualify as a de-facto partnership
Neither does it deal with intestate proceedings

PROPERTY RELATIONSHIP
ACT NZ
1976

- S 11A- De facto partners must be in a relationship for 3 years
- S13- Upon death or break down they are entitled to equal shares in all property
- s14A- If the relationship lasts less than 3 years the partner cannot take property unless there is a child of the relationship, they have made non-financial contributions to the relationship or it would be repugnant to justice to do otherwise

SO WHAT HAPPENS NOW?

For de facto relationships in Samoa:

- Property Law
 - There is a real need for reform in relation to constructive trusts for property purchased with the intention of being owned jointly
- Custody of Children
 - There is no need for reform at the moment however there may be a need to recognize the rights of biological parents in a de facto relationship
- Reforming the Law



Questions?