

How The Family Law Courts Approach An Ever Changing Family Form

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Summary

- History
- Definitions
- Legislation
- The new family form
- Case Law
- Surrogacy
- My thoughts
- Your thoughts?

Australia at the dawn of time (c 1976)

- Family Law Act commences operation in 1976
- Homosexual acts – illegal
- The nuclear family
- Early case law reflects the times
- Gronow – no automatic maternal presumption

Aldridge & Keaton (2009)

- Para 77
- ‘Further, just as in 1976....Gronow...recognised changing societal “norms” in rejecting the notion of presumption...of a mother to have custody of a child....the Act in its present form enables a court dealing with a parenting application the flexibility to recognise and accommodate “new” forms of family, including families with same sex parents.....’

In The Marriage of L (1983)

- Baker J
- 'Neither the wife nor Miss Y are obvious homosexuals. Both dress in a pleasant and appropriate fashion'
- '...the real issue in the case relates to the wife's homosexual relationship with Miss Y.'
- '(the mother's) one defect is her homosexuality and it might be said therefore that such defect in her personality renders her an unsatisfactory role model.'
- Checklist for such matters, including whether or not a child living in such a household might themselves become homosexual, and whether a homosexual parent would show the same love and responsibility as a heterosexual parent

In The Marriage of G (1988)

- Ellis SJ
- Accepts the expert evidence related to the rearing of the children in a homosexual household

Re: K (1994)

- Factors
- Where the sexual preference of one or both of the parents impinges on the welfare of the child

Golombok (2015) – Modern families

- The traditional family
- The new family form
- Late 20th century concept
- Same sex, surrogacy
- Child development
- Quality of parenting offered in each family form
- The complex interaction of various factors
- Even newer forms (diblings and twiblings)

Legislation

- Family Law Act, 1975
- State laws related to status of children
- No special category
- Best interests still apply
- Sec 60H - Millbank

Case law

- Re Evelyn (1998) – surrogate – change of mind
- KAM (1998) – third party application for contact – carer of child – previous relationship with the mother
- Re: Patrick (2002)
- Halifax and Fabian (2009)
- Aldridge & Keaton (2009) – should a person with no biological connection to a child have parenting orders made in their favour?
- Wilson & Roberts (2011) – two intact same sex couples
- Connors & Taylor (2012) – two children - lesbian mothers – each the biological parent of one child
- Groth & Banks (2013) – IVF and donor defined as a parent as he supplied the sperm

Surrogacy

- Summary
- Case law – Dudley & Chedi (2011), Ellison (2012) and Mason (2103)
- What does the future hold?
- Warning: Pascoe CJ and trafficking

My thoughts

- Do we need to define 'parent' in the FLA?
- Overhaul of FLA – Pt VII and sec 60CC
- Fluidity of legislation – are we keeping up
- What does it mean to be a parent?
- Penny Wong – 'I know what my family is worth.'

Your thoughts?



THANK YOU

AND ENJOY ALL THAT PENANG HAS TO OFFER