Legal Issues related to De Facto Couples in New Zealand – Papers by Bill Atkin, Professor of Law Victoria University of Wellington

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The law relating to de facto relationships remains in a confused state. The conflict between the traditional test of common intention, and the more modern approach of reasonable expectations leaves the current law unclear. This article looks at the de facto relationship cases of Hopkins v Sturgess and Sutcliffe v Reid. It analyses the different approaches that the judges use in order to solve similar problems. Finally, the author looks at the confusion that these differing approaches cause, and points out the need for reform in the area.

"The Legal World of Unmarried Couples: Reflections on 'De Facto' Relationships in Recent New Zealand Legislation"
This article is a revised version of a paper presented at a conference in Vienna 16-20 September 2008, the 13th World Conference of the International Society of Family Law. The paper notes how the New Zealand legislation for most purposes equates the legal position of de facto, civil union and married couples. The main part of the paper focuses on the key definition of "de facto relationship" and draws attention in particular to the leading High Court decision of Scragg v Scott. While there will inevitably be borderline situations, most are likely to fall easily within or outside the definition.

Unmarried cohabitation has been one of the most pressing issues in family law to date. Whereas once the law ignored everything but one man and one woman joined in matrimony, it has adapted in the light of the changing nature of relationships. This article first describes the Status of Children Act 1969 as a precursor of changes to come. It then goes through the case law reactions to de facto couples, as well as the steps taken to reform the law. This culminates in the Property (Relationships) Amendment Act 2001. Finally, the article critically analyses the effects this Act has with regards to the equating of de facto relationships and marriages.

Ever since the Matrimonial Property Act 1976 was passed, greater reform in the area has been promised. However, this reform has not been forthcoming until recently. This article summarises the changes proposed by the revolutionary Bill. In particular, focus is attracted to de facto couples and their ability to access relationship property, as well the Court’s ability to award equal and unequal division of property.

The rise of de facto and same-sex couples in New Zealand has led to a major change in the social and legal environment of New Zealand. However, many distinctions still continue. The De Facto Relationships (Property) Bill was created to address some of this imbalance in terms of relationship property. This article describes the law reform process, including the choice of a separate Bill, rather than an extension of the Matrimonial Property Act 1976. It then goes on to discuss the aims of the Bill, the jurisdictional issues that arise (including the limiting of de facto relationships to heterosexual couples), the division of property, and what happens on the death of a partner. These are contrasted with the Matrimonial Property Act 1976.

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Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

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