2019
New Zealand Law Foundation
National Family Law Moot
Problem Scenario & Instructions
INSTRUCTIONS TO MOOTERS

Each competitor must be currently enrolled in a university LLB programme as an undergraduate during the time of the competition.

Each competitor will speak for **20 minutes**. Points will be deducted for those mooters who speak beyond this period without seeking leave from the Bench. There will be no right of reply.

Teams must email their written submissions to uowmootsoc@gmail.com by **12:00pm on 19 July 2019**. This is to be strictly enforced. Points will be deducted from those teams who email their submissions later than the required time.

Written submissions of each team must be no longer than **4 single sided pages** (excluding the cover page and reference sheet). The formatting and referencing must be to the standards of the New Zealand Law Style Guide. Closer to the competition date your University will be assigned a letter from the alphabet. To anonymise your submissions please ensure they state your letter on the front sheet of your submissions, not your University.

This is an **open case list** moot. There is a suggested case list on the back of this problem, however competitors are allowed to refer to any legislation, cases, or secondary material that they wish to.

To help assist our judges, please provide electronic copies of cases referred to **outside** of the suggested case list to uowmootsoc@gmail.com alongside your submissions, and please also bring a physical bundle of those authorities with you to the National rounds. You will be required to hand these to your judge(s) before the start of each moot round.

All rounds are available for public viewing, however competitors and coaches cannot view another University teams rounds until they have been knocked out of the competition.

You will be provided with a sample of the marking sheet, which indicates the qualities the judges will be assessing you on.

Please note the judge’s written feedback sheet will not be available for competitors to view. If you have any questions about your submissions or performance, you must ask your respective judge when she/he is giving you oral feedback.
INSTRUCTIONS TO MOOTERS

Background

Mary Wahanui (Mary) died on 21 February 2014. As part of the distribution of her Estate, her son John Wahanui (John) received a 3 bedroom house and the farm it was situated on. The house and land had a value of $1,200,000.

Mary had a passion for horses and John honoured this by turning the inherited land into Rosewood Stud (Rosewood). John, as owner, also worked as a horse trainer at Rosewood after it opened. Amongst the other staff employed at Rosewood, Deborah Baker (Deborah) was employed as a jockey in January 2015. John and Deborah met in February 2015 at Rosewood and commenced a sexual relationship soon after the commencement of her employment.

John lives on site in the house and the spare rooms were often used by other workers as temporary accommodation as part of the terms of their employment agreement.

Deborah and John’s Relationship

Soon after they met, Deborah moved into the house with John. Although Deborah had her own bedroom, she spent most nights in John’s bed. The remaining bedroom was often used by other employees of Rosewood Stud for varying lengths of time. The house was fondly described as having a ‘revolving door’ because of the number of different people who would come and stay.

The other benefit of Deborah having her own room was that she and John were able to keep their relationship a secret. As John was the owner and Deborah was an employee, they felt that they needed to show the employees that working relationships should be strictly professional.

Expenses for the house were shared equally between the occupants. Deborah is a fantastic cook so generally she would cook the meals and John and whoever else was there would clean up. The house work was shared between all occupants. Deborah would often do the household’s washing, including John’s.

The employment agreement for Rosewood staff stipulates that the occupants are expected to contribute to the general maintenance of the property during their stay. Because Deborah lived permanently at Rosewood she felt she contributed over and above what her employment agreement says in the following ways:

- Mowing the lawns once a week
- Eradicating weeds
- Taking rubbish out
- Cleaning bathrooms and toilets
- Vacuuming; and
Ensuring the grounds were maintained and presented in a fit and tidy way.

In May 2016 the motor in John’s car blew up. Both of them had savings and they agreed to buy a car together. Through GEM finance they managed to get a loan to purchase a 2013 Mitsubishi Triton ute, which cost $22,999.00. The loan is in their joint names.

After that they opened a joint bank account called ‘Household Expenses’ through Kiwibank. Both John and Deborah agreed that it would be fairer if they equally contributed to the account, so both deposited $140 each week into the joint account. This also meant equal division of costs, which were as follows:

- Car repayments of $115 per week.
- General household costs including groceries, power and Sky TV of about $160 per week.

**Deborah’s Contribution to Rosewood**

Deborah is considered to be a very talented jockey and her renown is such that she drew a number of investors to Rosewood who were looking to share in what was turning into a promising venture.

John always acknowledged Deborah’s equine expertise and always consulted her when it came to making important business decisions. Deborah was incredibly knowledgeable and provided useful insights into what was required to turn Rosewood into a successful venture. After gaining Deborah’s perspective, John would often meet with Rosewood management to implement any important changes. Examples of the improvements made as a result of these discussions are as follows:

- Refurbishment of horse stables (value: $9,000)
- Office area (value: $17,000)
- Deck and viewing area on farm house (value: $23,000)
- Drainage and irrigation upgrade (value: $45,000)

These improvements were largely funded through a loan of $100,000 from the bank. Aside from contributing to the household expenses, Deborah also assisted John with repayment of this loan. Deborah contributed $100 per week from her income along with $150 per week from John to meet these loan repayments.

Since Rosewood’s inception, the land John inherited has increased in value to $1,800,000 as at March 2018.

**Aunt Marama**

John had a close relationship with his Auntie Marama (Marama) and would often visit. Marama was in her late 70’s and sadly in June 2017 she was diagnosed with cancer. John asked Deborah to go with him to visit Marama and said he wanted to introduce the two most important woman in his life to each other. Contrarily, John had never met any of Deborah’s family – he always made
excuses to avoid these.

They spent a weekend on the farm with Marama and Deborah was welcomed warmly. She was very traditional however and put them in separate bedrooms. She asked them to return again soon. Sadly, the cancer was aggressive and in December 2017 Marama died.

**Separation**

In October 2017 Deborah fell from a horse during a race, breaking her leg. Deborah required multiple surgeries and was in hospital recovering for about 8 weeks. John would come and visit when he was able to, usually once or twice a week.

In early January 2018 Deborah was released from hospital. John picked her up and brought her home. Deborah noticed that things had changed - John seemed distant and did not want to be intimate with her. On 5 February 2018 Deborah told John she was moving out. John barely reacted and Deborah figured the relationship was over anyway.

As Deborah couldn’t drive, she said she would leave the car with John for now. She arranged for her personal belongings to be moved out of her room and didn’t return to the house after that. At the time she moved out there was about $1400.00 in the ‘Household Expenses’ account. Deborah cancelled her weekly automatic payment into the ‘Household Expenses’ account once she moved out.

By June 2018 Deborah was almost fully recovered. She had not heard from John since they broke up. Deborah rang John and said they needed to sort out dividing their relationship property. John didn’t understand what she was talking about, saying there was just the car and that was it.

Deborah said they were in a de facto relationship and wanted an equal share of the relationship property including household chattels, the joint bank account and car. Deborah also wants to share in the increase in value of the Rosewood Stud as relationship property. On advice of her lawyer, Deborah applied to the Family Court for division of the relationship property.

**JUDGMENT OF THE FAMILY COURT**

Reserved decision of Judge Adamson:

**Is there a de facto relationship in accordance with s 2D?**

[1] Ms Baker is required to demonstrate that her relationship with Mr Wahanui meets the definition of a de facto relationship listed at s 2D(1) of the Property (Relationships) Act 1976.

[2] Despite the fact parties are clearly over 18 years of age and are not in a marriage or civil union, I am not satisfied that the parties were living together as a couple.

[3] In reaching this decision, I refer to the factors listed in s 2D(2). I find that the relationship is one of co-workers sharing a joint residence in the course of employment.
**Is there a de facto relationship of short duration in accordance with s 14A?**

[4] Although I have determined that there is no de facto relationship between Ms Baker and Mr Wahanui, I will still consider whether there would have been a de facto relationship of short duration in accordance with Ms Baker’s submissions. This is set out in s 14A of the Act.

[5] Section 14A(1) requires the de facto relationship to be a relationship of short duration as defined in s 2E. I am satisfied that the relationship should have been considered as one of short duration based on s 2E(1)(b)(ii).

[6] However, I am not satisfied that the requirements of s 14A(2) have been met. Namely:

(a) Ms Baker has not made a substantial contribution to the de facto relationship; and

(b) The failure to make the order would not result in serious injustice.

[7] As such, I would not have been prepared to make an Order in Ms Baker’s favour under s 14A.

**Is the property Rosewood Stud relationship property or separate property in accordance with s 9A?**

[8] I am not satisfied that the property can be included in the relationship property pool for the following reasons:

(a) The increase in value of the property cannot be sufficiently attributed to the application of relationship property by Ms Baker.

(b) The increase in value of the property cannot be sufficiently attributed to the actions of Ms Baker.

**Conclusion**

[9] For the reasons given, I dismiss the application of Ms Baker.

Deborah now appeals the Family Court decision to the Moot High Court on the following grounds:

**Senior Counsel**

**Issue One:** Was the Family Court correct in finding that the parties were not living together as a couple in accordance with s 2D(2)?

**Issue Two:** Was the Family Court correct in finding:

(a) That Ms Baker has not made a substantial contribution to her relationship with Mr Wahanui (s 14A(2)(a)(ii)).

(b) That the Order would not create serious injustice (s 14A(2)(b)).
Junior Counsel

**Issue Three:** Did the Family Court err in concluding that the increase in value of the Rosewood Stud was not attributable to the application of relationship property (s 9A(1))?  

**Issue Four:** Did the Family Court err in concluding that the increase in value of the Rosewood Stud was not attributable to the actions of Ms Baker (s 9A(2))?  

**NOTES FOR COUNSEL**

This is an appeal against the decision of Judge Adamson in the Family Court. The Appellant is Ms Deborah Baker and the Respondent is Mr John Wahanui.

Senior Counsel

**Issue One**

The Judge concluded that there was no de facto relationship between Deborah and John based on the definition of “living together as a couple” set out in s 2D(2) of the Act.

On appeal, Senior Counsel will be required to argue the circumstances of the parties’ relationship meant that Deborah and John were living together as a couple within the meaning of the Act.

**Issue Two**

The Family Court Judge dismissed Deborah’s claim that there was a de facto relationship of short duration because it was concluded that the parties were not living together as a couple (see Issue One). Despite this, the Judge explained that she would not have found that there was a de facto relationship of short duration according to s 14A even if she was satisfied that the parties were living together as a couple.

For the purposes of this matter, in order to have a claim under s 14A, the Court needs to be satisfied that:

1. The relationship is one of short duration (as defined in s 2E); and  
2. Deborah has made a substantial contribution to the de facto relationship; and  
3. The failure to make the order would result in serious injustice.

The Family Court was satisfied that the relationship was one of short duration according to s 2E. Therefore, the issues on appeal are whether Deborah has made a substantial contribution, and whether the failure to make an order would result in a serious injustice.
Junior Counsel

Issue Three

This issue is focused on the property of Rosewood Stud, which John inherited from his mother. This property is separate property because it is an inheritance, however Deborah claims that the increase of value of the land is relationship property according to s 9A(1). The Judge was not satisfied of this.

On appeal, Junior Counsel will be required to argue whether the increase in value of the Rosewood is attributable to the application of relationship property according to s 9A(1).

Issue Four

The Family Court Judge was also not satisfied that the increase in value of Rosewood Stud was attributable wholly or in part to the actions of Deborah. Therefore, the issue on appeal is whether s 9A(2) of the Act is satisfied.

LIST OF SUGGESTED AUTHORITIES

NB: The Moot High Court is not bound by any authority.

Statutes

• Property (Relationships) Act 1967

Cases

• Scragg v Scott [2006] NZFLR 1076
• B v F [2010] NZFLR 67
• Lawson v Perkins (2007) 26 FRNZ 946
• Schmidt v Jawad [2006] NZFLR 410
• Garard v Roberts [2013] NZHC 89
• H v E [2012] NZHC 1372
• J O (deceased) v J V S [2012] NZFC 9016
• Rose v Rose [2009] NZSC 46
• Nation v Nation [2005] 3 NZLR 46
• KRJ v RK [2014] NZFLR 127
• Hight v Hight [1997] 3 NZLR 396
• All authorities referred to within these cases
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