

Week 2: Property and Children

Child Custody

Child Custody in Australian Family Law

The term "custody" is not commonly used in Australian family law. According to the Family Law Act (1975), courts apply a presumption of **equal shared parental responsibility**.

This means that both parents have equal rights in relation to the custody and parental responsibility over their child.

However, depending on the circumstances of the case, there can be some exceptions to this.



What is Parental Responsibility?

Section 61B of the Family Law Act (1975) defines parental responsibility **as all the duties, powers, responsibilities, and authority which, by law, parents have in relation to children.**

This also involves making major short-term and long-term decisions in the child's life. When two parties have equal shared parental responsibility, they can make such decisions together.

That is one parent can only make such decisions with the consent of the other parent.

Long-term decisions includes decisions about the child's name, education such as which school they'll attend, health of the child and residence of the child.

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Equal Shared Parental Responsibility

In family law matters, courts give paramount consideration to the best interests of the child.

One of the best interests of the child according to Section 60CC of the Family Law Act is the benefit to the child of having a meaningful relationship with both parents.

Therefore the courts apply this presumption of equal shared parental responsibility.



Sole Parental Responsibility

However, if the family law matter involves extreme scenarios like domestic or family violence, one parent can get sole parental responsibility.


When a parent has sole parental responsibility over the child, they can make all major decisions in the child's life without needing to take the consent of the other parent.


If a parent has sole parental responsibility, it does not mean that the other parent cannot get a chance to spend time with the child.


They can still visit the child and maintain communication with them.

If they pose a threat to the safety or well-being of the child, the court may order that the parent meet the child only in supervised visitation centres.

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Case Study on Child's Interests

Case Study Example A

Let's suppose that a case involves a dispute between two parents over the parenting arrangements for their child.

The father sought to have the child live with him and spend limited time with the mother, while the mother sought for the child to live with her and spend regular time with the father. The case was complicated by allegations of family violence and substance abuse by the father.

After considering the evidence presented by both parties, the Family Court made orders for the child to live primarily with the mother and spend limited time with the father. The Court also made orders for the father to attend counselling and undertake drug and alcohol testing.

This is an important example because it highlights the importance of considering the best interests of the child in family law matters and the various factors that may be relevant to determining what is in their best interests.


The case also demonstrates the need for the courts to carefully consider allegations of family violence and substance abuse in making parenting orders, and the importance of ensuring the safety and wellbeing of children in these cases.


Case Study A Takeaway


From the above case we understand that family courts give utmost importance to the best interests of the child.

Because the court also values the benefit to the child of having a meaningful relationship with both parents, in family violence cases, it will consider ordering supervised visits for the child.

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