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Introduction to the Laws of Timor-Leste

**Family Law:
Parentage and
Children in Timor-
Leste**

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Preface to the Series: *Introduction to the Laws of Timor-Leste*

Timor-Leste has enjoyed a decade of formal independence. The country's democratic institutions have grown during this period. But, as thoughtful Timorese are quick to point out, much remains to be done. Building viable and professional state institutions takes time. And growing the human resource capacity within those institutions is always a major challenge to new states.

The capacity building imperative in Timor-Leste is both striking and compelling. Establishing state agencies in the first instance is relatively much easier than filling those agencies with effective professionals that uphold their duties and responsibilities. Building the capacity of a pool of Timorese who hold, or may hold, positions within legal and other state institutions is crucial. Likewise, building an educated understanding and awareness of the obligations and responsibilities of key actors within legal institutions, and government institutions more broadly, contributes to setting demands and expectations for performance among the polity. Encouraging professionalized capacity within state institutions, on the one hand, and thoughtful and calibrated demands for performance by citizens, on the other hand, are essential dynamics for the development of the rule of law and a democratic state in Timor-Leste. Institutions of higher learning, such as universities and professional training centers, can and should play a key role in stimulating and sustaining this dynamic. Indeed, education is foundational.

This paper is part of the *Introduction to the Laws of Timor-Leste* series of papers produced by the Timor-Leste Legal Education Project (TLLEP). This series seeks to critically engage the reader in thinking about the laws and legal institutions of Timor-Leste, and is based on a model of educational writing first introduced in TLLEP's *Introduction to Professional Responsibility in Timor-Leste* textbook, published in 2011. Founded in March of 2010, TLLEP is a partnership between The Asia Foundation and Stanford Law School. Working with local actors in the Timor legal sector, the project's goal is to positively contribute to the development of domestic legal education and training in Timor-Leste. USAID provided funding for this series through its Timor-Leste Access to Justice Program.

The authors of the legal working papers focused on writing in clear, concise prose, and on using hypothetical legal situations, discussion questions, and current events. Through this style of writing and pedagogy, the aim is to make these texts accessible to the largest possible audience. The texts are designed to be broadly accessible to experienced Timorese lawyers and judges, government officials, members of civil society, Timorese students in law, and the international community. They cover topics ranging from constitutional law to inheritance law to the Petroleum Fund Law.

These working papers represent the dedicated efforts of many individuals. Stanford Law School students authored the texts and subjected each working paper to an extensive editing process. The primary authors for this series were Peter Broderick, Daniel Cassman, Margaret Hagan, Brian Hoffman, Lexi Shechtel, and Anne Johnson Veldhuis, all Class of 2013. Jessica Fox, Hamida Owusu, and Samuel Saunders (all Class of 2014) edited the series under the guidance of Stanford Rule of Law Fellow Megan Karsh ('09). The students benefitted from the substantial and extensive guidance provided by Brazilian lawyer Dennys Antonialli (LLM '11) and Geoffrey Swenson ('09), TLLEP's former in-country director and legal advisor to the Asia

Foundation's Dili office. The program has also received extensive support from Kerry Brogan, previous Country Representative Silas Everett, current Country Representative Susan Marx, Juliao de Deus Fatima, and a host of other Asia Foundation staff. USAID Timor-Leste provided vital financial and programmatic support to the program. We especially thank USAID Director Rick Scott and USAID staff Ana Guterres and Peter Cloutier. The US Embassy in Dili, especially Ambassador Hans Klemm and Ambassador Judith Fergin, have been incredibly supportive. I would be remiss if I did not thank the former and current deans of Stanford Law School, Deans Larry Kramer and Liz Magill, for their unwavering support of this project.

Finally, this series of papers simply would not have been possible without the many thoughtful and critical insights from Timorese judges, educators and lawyers, and those who work within Timorese institutions. Prosecutor General Ana Pessoa, Public Defender General Sergio de Jesus Hornai, and President of Court of Appeals Cláudio Ximenes were extremely gracious in clarifying issues related to their respective organizations and offering constructive suggestions. The textbooks received vital input from National University of Timor-Leste (UNTL) faculty and staff throughout the drafting and review process including comments from Rector Aurelio Guterres, Law Deans Tome Xavier Geronimo and Maria Angela Carrascalão, Professor Benjamin Corte Real, and Vasco da Cruz of the Portuguese Corporation. Feedback from UNTL students themselves on draft text was immensely helpful for the final text. The Judicial Training Center (CFJ) has also been a source of wisdom throughout the drafting process, particularly CFJ Director Marcelina Tilman, Erika Macedo, and Bernardo Fernandes. The text benefited as well from the contributions of Charlie Scheiner and La'o Hamutuk, the staff of the Ministry of Justice Legislation Unit, AALT Executive Director Maria Veronika, Judge Maria Netercia, Judge Jacinta Coreia, JSMP Executive Director, Luis de Oliveira, JSMP Legal Research Unit Coordinator, Roberto da Costa, ECM director Lino Lopes, and Sahe Da Siliva. We are also grateful to Gualdinho da Silva, President of the National Petroleum Authority, for two wonderfully engaging meetings.

In addition to this series and the already-published texts on professional responsibility, constitutional rights, and contracts, TLLEP has plans to complete the first edition of a new textbook in 2013 entitled *An Introduction to Criminal Law in Timor-Leste*. All texts are updated as the legal landscape changes. The most recent versions of all published texts are always available for download online free of charge on TLLEP's website: www.tllep.law.stanford.edu.

To the students, educators, legal and government professionals that use this book, we sincerely hope that it sparks study and debate about the future of Timor-Leste and the vital role magistrates, prosecutors, public defenders, private lawyers, and government officials will play in ensuring the country's future is bright.

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Family Law: Parentage and Children in Timor-Leste

OBJECTIVES

- To explain the rights and duties that come with parenthood.
- To understand the formalities necessary to establish maternity, paternity, guardianship, or adoption.
- To explain the types of legally permissible guardianships and adoptions.

OVERVIEW

- Maternity and paternity of a child must be established. In some circumstances, this is included in the birth registration; sometimes it must be investigated by a court.
- The husband of the child's mother is assumed to be the father, but this assumption can be contradicted under various circumstances.
- Parents have rights and obligations with respect to their children. They are responsible for giving their children food, shelter, clothing, and education, as well as providing for their health and safety.
- If a child's parents are deceased or cannot exercise appropriate parental authority over the child, the court appoints a guardian to do so; the guardian is usually a member of the child's family. The guardian is overseen by a family council.
- Sometimes another person can adopt a child if the parents give authority for the adoption or are unable to parent the child. Once the child is adopted, the adopter has all the same rights and legal duties as parents; adoption is irrevocable.
- Parents and spouses often have the legal duty to provide enough money (alimony) for the recipient spouse or child to be able to live on.

I. INTRODUCTION

The family unit is the foundation of society's structure. Laws define and regulate marriage in order to maintain stable families. The government also has an interest in regulating the relationship between parents and children. In order to do this, the state must first determine exactly *who* the parents are, because being a parent comes with certain legal responsibility and rights. Second, the state wants to ensure that every child is being taken care of, either by the child's **natural parents** (birth parents), or by a guardian, state institution, or adoptive parent. Finally, the **law of alimony** creates a financial obligation for spouses or parents to financially support their children.

In order to obtain the rights and duties that legally follow from being a parent, parenthood must be legally established, as discussed in Civil Code Article 1677 below.

The Civil Code of Timor-Leste

Article 1677: Credibility of Parentage

1. The powers and duties arising from parentage or from the relationship established therein are only credible if parentage is legally established.
2. Establishment of parentage has retroactive effect however.

Questions

1. If Carla is born in May 2012 and Tomas is legally established as her father in November 2012, when do Tomas's legal duties begin?

Answers

1. Tomas's duties are *retroactive* (Article 1677(2)). This means that Tomas's duties as a parent began before he was established as Carla's legal father. Tomas may have to pay alimony to Carla or her mother for the months before he was legally established as Carla's father, if he was not supporting Carla during this time.

II. WHO IS A PARENT? MATERNITY AND PATERNITY

SECTION OBJECTIVES

- To understand the birth registration process.
- To understand how the court determines the maternity and paternity of a child.

Because many legal obligations come with parenthood, it is important to legally establish the natural parents of every child (Article 1677). The law has specific procedures for determining and registering this information and the law for determining maternity differs from the law for determining paternity. This is because, if a woman is pregnant with a child, there is usually no doubt that she is the mother. With modern technology, this may not always be true, but it is the most common scenario. The Civil Code allows for the use of blood tests or “other scientifically proven methods” for determining parentage (Article 1681).

1. Maternity

Every birth must be registered with the government. This is done by **declaring** the birth. The person declaring the birth should also try to identify the mother of the child and mention it in the registration document (Article 1683). If the birth that is being registered took place less than a year ago, then mentioning the maternity is enough to consider maternity legally established (Article 1684). If the birth declaration happens one year or more after the actual birth, maternity will only be considered legally established if the mother is the person declaring the birth, or she is present at the declaration (Article 1685). If the mother is *not* present at the birth registration, then the mother will be notified of the declaration. She then has 15 days to confirm her maternity. If she does not confirm, then the child is not considered hers (Article 1685).

If the maternity declared in the registration process is *not* true, then the actual mother can **repudiate** it at any time in court. This means that the actual mother can dispute or deny the claim of the other woman who declared maternity. The child himself, anyone with a “moral or patrimonial interest in the cause of the proceedings,” or the office of the public prosecutor can also repudiate the maternity declaration in court (Article 1687). If this sort of repudiation occurs,

or if no mother is declared on the registration at all, the court then investigates in order to find out who the mother is. If the court is able to confirm maternity, it completes the birth registration. If maternity is not confirmed but the court is able to gather proof that the investigation will be able to locate the mother (“guarantees the viability of investigation proceedings,”) it issues an order to the public prosecution service for further investigation (Article 1688). Note that the investigation is secret and “shall be conducted so as to avoid offending the sensibilities or dignity of the persons involved” (Article 1692). Finally, the child herself can also bring proceedings to prove maternity.

As you can see from Article 1696(2), it is much easier for the child to prove maternity when the alleged mother acts as a mother or declares herself to be the mother. Additionally, the child can only bring proceedings to prove maternity when he is a minor (16 years old or younger), or within two years after reaching the age of majority (18 years old) (Article 1697).

The Civil Code of Timor-Leste

Article 1696: Proof of Maternity

1. During proceedings to investigate maternity, the child shall prove that he or she was born of the supposed mother.
2. Maternity is assumed:
 - a) When the child has been considered and treated as such by the supposed mother and also considered as such by the public;
 - b) When there is a letter or other written document in which the supposed mother unequivocally declares her maternity.
3. The assumption is considered refuted when there are serious doubts as to maternity.

A minor or incapacitated child has the right to receive provisional alimony (discussed further in section VI, below) from the alleged mother starting from the time the proceedings begin, as long as the court considers it likely that the woman will be confirmed as the mother (Article 1701).

2. Paternity

It is assumed that the father of a child born or **conceived within marriage** to the mother is the mother's husband (Article 1706). "Conceived within the marriage" means that the child was born less than 180 days after the marriage ended (Article 1678). Unless the husband refutes the assumption or disproves that he is the father, he has legal responsibility as the father of the child. For example, this assumption of paternity will be refuted if the mother or her husband declares when registering the birth that the husband is not the father (Article 1708). The assumption of paternity also ceases if the birth of the child occurs 300 days after the spouses stop **cohabitation** (living together). If the spouses were having sexual relations before a divorce decree became final the paternity of the husband more probable. In this situation, the former husband is then assumed to be the father if the child in question is treated like the spouses' child (Article 1711).

If the mother remarries and a child is born before the first marriage has been dissolved, the second husband is assumed to be the child's father. If the child is born *within* 300 days after the first marriage has been dissolved, the second husband is assumed to be the father. This assumption can be challenged if the second father repudiates his paternity – then the first husband is assumed to be the father (Article 1714).

Paternity can be **repudiated** (disputed or denied) by the mother's husband, the mother, the child, or the office of the public prosecutor (Article 1719). In order to repudiate paternity, the person must prove that the paternity is "clearly unlikely." There are time limits to bringing this claim. The husband has to bring a repudiation claim within two years of the time that he learned information that led him to conclude he is not the father of the child. The mother has to bring a repudiation claim within two years following the birth. The child has to bring suit within a year of reaching majority, emancipation, or knowing the circumstances of his paternity (Article 1722).

Sometimes a child is born **out of wedlock**. This means that the child's parents were not married at the time the child was born. The court investigates in all cases where the child is registered with only maternity established (Article 1727, Article 1744). The investigation follows a certain procedure. If possible, the court hears from the mother about who she believes is the father to the child. The named father will also be heard by the court. If the alleged father confirms paternity, then he is added to the child's registration. If he denies or does not confirm,

then the court determines whether a paternity investigation suit is viable. If the court determines that there is enough proof of paternity, the case is submitted to the office of the public prosecutor in order to file the investigation suit (Article 1745).

Paternity is also assumed in the following circumstances (Article 1751):

- a) When the alleged father treats the child as his own child;
- b) When there is a letter or some other written document in which the alleged father unequivocally states his or her paternity;
- c) When there is an enduring relationship similar to marriage between the mother and alleged father during the **legal period of conception** (the period between 180 to 300 days before the birth of the child);
- d) When it is proven that the father had sexual relations with the mother during the legal period of conception; and
- e) In cases when the alleged father seduced the mother during the legal period of conception and: the mother was a virgin or a minor at the time of seduction, or her consent was given due to a promise of marriage, abuse of trust, or abuse of authority.

When there are serious doubts about the paternity, however, these assumptions will be deemed disputed.

Questions

1. Antonio is born in June 2012. In August 2013, his father, Jose, registers the birth and declares Cecilia to be the mother. Is Cecilia's maternity established?
2. Manuel and Joana are a divorced couple. 200 days after they divorce, Joana marries Hugo. 100 days later, Joana has a child. Who is the assumed father?
3. Jorge and Alia are married and have a child named Ana. In March 2012, when Ana is a teenager, Jorge learns that Alia had an affair many years ago and that Ana may not be his child. Can he bring suit to repudiate his paternity? Can Ana?
4. Lena is unmarried and gives birth to a child. During the legal period of conception, Julio seduced Lena. Is he assumed to be the father?

Answers

1. No. The birth declaration is made more than a year after the birth, and the mother is not the one declaring the birth. She is also not present at the declaration. In order for maternity to be established, Cecilia must confirm her maternity within 15 days (Article 1685).
2. Hugo, the second husband, is assumed to be the father. If, however, Hugo refutes his paternity and this repudiation seems to have grounds, then Manuel is assumed to be the father (Article 1714).
3. Both can bring suit. Jorge must challenge his paternity within two years of learning about the affair - so by March 2014. Ana can also challenge the paternity, but she only has one year to do so. She must challenge by March of 2013 (See Article 1722).
4. This is a difficult question, but Julio is probably assumed to be the father. Article 1751 seems to have contradictory provisions. Subarticle "e" states that if it is proven that Julio had sexual relations with Lena during the period of conception, he is assumed to be the father. But subarticle "d" also says that a person is only assumed to be the father if the mother was a virgin and minor at the time of the seduction, or if the seduction was based on false promises or abuse. Based on subarticle "d", Julio is not assumed to be the father as long as Lena was not a virgin minor or her consent was gotten because of trickery. Based on subarticle "e," however, Julio is assumed to be the father because he had sexual relations with Lena during the period of conception.

III. EFFECTS OF PARENTAGE

SECTION OBJECTIVES

- To understand parents' duties to their children.
- To understand the content of parental authority over their children.
- To explain the limits of parental management of assets.

1. Parental Authority

It is important to establish who a child's parents are because parents have certain legal rights and duties to their children; for example:

The Civil Code of Timor-Leste

Article 1754: Duties of parents and children

1. Parents and children owe each other respect, help and assistance.
2. The duty of assistance includes the obligation of providing alimony and of contributing, during their life together and in accordance with their own resources, towards the expenses of family life.

Another parental duty is naming the child. The child can have the last name of his father, the last name of his mother, or both. The parents can also choose a first name. If they cannot agree, the court will decide, "in harmony with the best interests of the child" (Article 1755). Even if paternity is not established, the last name of the mother's husband can be given to the child, as long as the mother and her husband formally agree. Within two years of reaching majority, however, the child can request that the last name of the husband or of the mother be removed from his or her own name (Article 1756).

Parents also have authority over their children. Children are subject to parental authority until they reach the age of majority or until they become legally emancipated from their parents (Article 1757).

The Civil Code of Timor-Leste

Article 1758: Content of parental authority

1. Parents, in the interest of their children, have the duty of caring for their safety and health, providing their sustenance, directing their education, representing them, even the newly born, and managing their assets.
2. Children owe obedience to their parents; parents, however, depending on the maturity of their children, shall take into account their opinion on all important family matters and recognize their autonomy in organizing their own lives.

Parental authority means that parents are responsible for their child's well-being and upbringing. Parents must also ensure the physical, intellectual, and moral development of their children, depending on their resources. Parents shall provide their children, especially those with physical and mental limitations, with an appropriate general and professional education corresponding, as much as possible, with the abilities and interests of each child (Article 1765). The decisions about the religious education of children younger than sixteen also belong to the parents (Article 1766).

Parents do *not* have the obligation to pay for their child's sustenance or for expenses related to their safety, health and education if the child is able to bear those expenses himself, by working or through other means (Article 1579). Parents may still have these obligations towards children who have reached the age of majority, but who have not completed a professional degree, as long as it is reasonable and for the length of time usually required to earn a professional degree (Article 1760). Lastly, parents may not unjustifiably deny their children the company of their siblings and relatives (also called **ascendants**) (Article 1768).

Article 1758 also mentions the **power of representation**. This is the exercise of all legal rights and the fulfillment of all the legal obligations of the child. For example, if a child has a right to sue somebody because of an injury the child suffered, the parent of the child can exercise that legal right. If there is a conflict between the interest of the parents and the children, however, or between two children represented by the same parents, the court will appoint a special trustee to represent the interests of the child (Article 1761).

As you can see, having a child comes with a lot of responsibilities. Children who are minors cannot leave or be removed from their parental home (Article 1767). Parents also cannot waive their parental authority or any other rights or duties of parenthood (except through adoption, which is discussed in Section V below) (Article 1762). Even if the parents are unmarried, the father has duties towards the child. Any father whose paternity has been established, but who is not married to the mother of the child, must provide the mother with **alimony** beginning from the period of pregnancy through the child's first year of life (Article 1764). If the couple is married, parental authority belongs to both parents. If they cannot agree about how to exercise their authority, either spouse can ask the court for help with reconciliation. If they still cannot agree, the court can hear from the child, as long as he is older than 14 years old and it is justified by the circumstances (Article 1782). Additionally, when one of the parents acts, it is assumed that both parents agree, except when the law explicitly requires the consent of both parents.

If a child born to unmarried parents only has one established parent, this parent shall have parental authority (Article 1791). If the both parents are known but not married to each other, then the exercise of parental authority belongs to the parent who has the *de facto guardianship* of the child (Article 1792). This means that the parent who is actually taking care of the child as a guardian (even without being the legal parent) has parental authority. If the unmarried parents cannot agree on a decision about their child, then the court can decide in harmony with the interests of the child (Article 1792). Finally, if the marriage is dissolved due to death of one of the spouses, the surviving spouse has sole parental authority (Article 1785).

2. Assets

Parents are generally responsible for managing their children's assets. **Assets** include money, land, inheritances, and other valuable property. There are a few exceptions to this:

The Civil Code of Timor-Leste

Article 1769: Exclusion of management

1. Parents are not entitled to manage the following:

- a) Assets of children that result from succession of which the parents have been excluded, due to indignity or disinheritance;

- b) Assets received by a child through donation or succession against the will of the
- c) Assets bequeathed or donated to the child with an exclusion of parental management.
- d) Assets acquired by children older than sixteen years old, due to their work.

2. Exclusion of management, under the terms of subparagraph c) of the previous paragraph, is allowed even in the case of assets that belong to the child as a portion in his or her or her parents' estate.

Article 1770 also lists 14 activities that a parent cannot do without permission from the court. These activities usually involve making major financial decisions on behalf of the child that may have serious and negative long-term effects. The law also protects against parents abusing the rights or assets of the child. For example, parents may not lease or acquire any of their child's assets or rights unless the court authorizes it (Article 1773). Parents may use the income produced by the child's assets to pay expenses involved in her sustenance, safety, and health (Article 1777). The income can also be used reasonably to pay for expenses related to family life (Article 1777).

3. Special Circumstances

If a child's parents get divorced, legally separated, or have their marriage annulled, the parents, must determine who will have parental authority over the child. This decision is made with the help of the court:

The Civil Code of Timor-Leste

Article 1786: Divorce, judicial separation of persons and assets, declaration of nullity or annulment of marriage

1. In the cases of divorce, judicial separation of persons and assets, declaration of nullity or annulment of marriage, the fate of the child, the alimony and the manner in which it shall be provided to the latter are regulated by agreement of the parents, subject to the endorsement of the court; the approval is denied if the agreement does not correspond to the interests of the minor child, including the interest in maintaining a relationship of close proximity with that parent to whom he or she is not entrusted.
2. In the absence of an agreement, the court shall decide, in harmony with the interests of the minor child, including the desire to maintain a relationship of close proximity with the parent to

whom he or she is not entrusted, and the guardianship of the minor child may fall on either parents, in the case of any of the circumstances foreseen in article 1799, to a third party or child re-education or welfare establishment.

As part of the divorce settlement, parents can come to many different types of agreements. They can agree to give one parent parental authority, or decide that both parents will keep parental authorities. The divorcing parents can also decide that there are only certain matters that both must agree on. The parent who is not exercising parental authority is still entitled to oversight powers regarding the education and life conditions of the child (Article 1787). All of this also applies to spouses who are separated but not legally divorced (spouses who no longer live together, for example) (Article 1790).

Sometimes, a child is entrusted to another person who is not a relative. A child can also be entrusted to a state institution. In those cases, the person or the institution also has the powers and duties of a parent as required to perform their functions as guardians (Article 1788).

4. Losing Parental Authority

Sometimes parents can lose their rights of parental authority. People convicted of certain crimes, persons incapacitated due to mental disorders, and **non-emancipated minors** (children who still have a legal guardian) are also not able to fully exercise parental authority (Article 1794). The court can also order that parental authority be taken away whenever a parent is found guilty of failing to fulfill his or her duties toward the children, and this results in serious harm to the children (Article 1796). Parental authority can also be taken away by the court if the parent shows no ability to fulfill his or her duties because of inexperience, illness, absence, or other reason (Article 1796). If the safety, health, ethical training or education of the child is in danger, the court will order that appropriate measures be taken to protect the child (like having a third person or an educational or welfare establishment take care of the child) (Article 1799). If the child is entrusted to a third party or institution, the court establishes a **visitation regime** describing when the parents are allowed to visit the child (Article 1800).

Questions

1. Marquita and Artur have a son, Pedro. He is 20 years old. Do they still have a duty to provide for him?
2. Marquita and Artur have another son, Victor. He is only five years old. Marquita really wants Victor to take surfing lessons, but Artur thinks they are too dangerous and does not want Victor to do it. Marquita takes Victor to a surfing lesson anyway. What happens?
3. Marquita takes Victor surfing and then does not watch him carefully when he is in the water. Victor hits his head and suffers serious injury. What will happen?

Answers

1. The duty to provide depends on the length of time that is usually required for a person to receive a professional degree. If Pedro is in school and it is “reasonable” for his parents to keep on supporting him, then they may still have a legal obligation. If Pedro is not pursuing any degrees or he is still being supported by his parents past the time usually required to earn a professional degree, then his parents do not have a duty to support him (Article 1760).
2. Usually, when one of the parents acts, it is assumed that both parents agree. In this case, the surfing instructor might refuse to teach Victor if he knows that Artur is opposed to his son taking the lessons (Article 1783). If Marquita and Artur continue to seriously disagree, then the court can make a decision in harmony with Victor’s interests (Article 1792).
3. Marquita might lose her parental authority. A court can order the loss of parental authority a parent fails in her duties towards her child, resulting in serious harm to the child (Article 1796). If the court found that Marquita’s inattention while her five-year-old son was in the ocean was a failure to ensure Victor’s health and safety, she could lose her authority over Victor. In that case, Artur would probably have sole parental authority over Victor.

IV. GUARDIANSHIP

SECTION OBJECTIVES

- To understand what guardianship is and how it works.
- To explain who may be a guardian.
- To understand the role of the family council.

Guardianship is a way to provide parental authority to a child in special circumstances. A guardian exercises parental authority when the parents are prevented from doing so, because of death, incapacitation, or other reasons. In these circumstances, the court appoints a person to be a guardian of the child instead (Article 1809).

The Civil Code of Timor-Leste

Article 1805: Minor children subject to guardianship

1. Minor children are mandatorily subject to guardianship in the following instances:
 - a) If the parents are deceased;
 - b) If they are inhibited from parental authority regarding personal management of the child;
 - c) If they have been de facto impeded from exercising parental authority for more than six months;
 - d) If they are unknown.
2. In the case of de facto impediment of the parents, the Office of the Public Prosecutor shall take all necessary measures to defend the minor child, irrespective of the expiration of the time limit referred to in subparagraph c) of the previous paragraph, and may, for that effect, promote the appointment of a person who shall, on behalf of the minor child, perform those legal transactions of an urgent nature or that result in proven benefit to the latter.

A guardian must be chosen by the court or the child's parents (Article 1811). Parents can appoint guardians in case of their death or incapacitation in a will or other authenticated or certified document. If only one parent dies but the other survives, the guardianship is considered effective unless it is revoked by the surviving parent (Article 1812). When parents have not appointed a

guardian, the court must appoint a guardian after hearing from the **family council**, other relatives, and people who have cared for the child. The court also hears from the child himself if he is 14 years old or older (Article 1814). The court will try to arrange the guardianship of two siblings so that a single guardian will take care of both children (Article 1815). Guardianship is typically mandatory (Article 1810). However, there are two types of people who cannot be guardians:

- ❖ People who are legally prevented from being guardians; and
- ❖ People who are exempted from guardianship.

The Civil Code of Timor-Leste

Article 1816: Persons who may not be guardians

1. The following persons may not be guardians:

- a) Minor children not yet emancipated and those interdicted or incapacitated;
- b) Those who are noticeably insane, even when they are not interdicted or incapacitated;
- c) Persons with bad behaviour or whose way of life is unknown;
- d) Those with their parental authority inhibited or suspended in full or in part;
- e) Those who have been removed or are suspended from another guardianship or position of voting member in a family council due to failure to fulfil their respective obligations;
- f) Those with a pending lawsuit with a minor child or his or her or her parents, or against whom a lawsuit was filed less than five years ago;
- g) Those whose parents, children or spouses have now, or have had less than five years ago, a lawsuit with the minor child or his or her or her parents;
- h) Those who are personal enemies of the minor child or his or her or her parents;
- i) Those who have been excluded by the father or mother of the minor child, under the same terms whereby any one of them may appoint a guardian;
- j) Judicial magistrates or those of the Office of the Public Prosecutor who have positions in the county of residence of the minor child or of the location of the assets.

2. Those incapacitated due to prodigality, bankruptcy or insolvency, as well as also those inhibited or suspended from parental authority or removed from guardianship as it relates to asset management, may be appointed guardians, provided that they are merely in charge of the guardianship and management of the minor child.

The law seems to want to ensure that a person who cannot provide for a child or treat a child well will not be appointed a guardian. The law also lists several types of people who are exempt from guardianship. In general, people exempted from guardianship have occupations or family responsibilities that would not allow them the time or resources to adequately look after the child. Some examples include military personnel in active service, persons with more than three descendants under their care, and persons who are already guardians or trustees (Article 1817). Article 1817 also explains that people who are not relatives of the child are exempt from guardian duties.

1. Rights and Obligations of Guardians

Unless the law states something different, a guardian generally has the same rights and duties as a parent (Article 1818). The child that a guardian is taking care of is called the guardian's **ward**. Unlike a child's natural parents, a guardian may only use income from the ward's assets to manage the assets and pay for the ward's sustenance and education. The guardian cannot use the ward's assets to take care of the rest of the guardian's family. Additionally, Article 1820 lists certain activities a guardian cannot do. These activities are typically actions that would harm the financial interests of the ward or lead to a conflict of interest:

The Civil Code of Timor-Leste

Article 1820: Acts restricted to the guardian

The guardian is restricted from the following acts:

- a) Disposing of the assets of the minor child gratuitously;
- b) Leasing or acquiring, directly or through an intermediary, even at a public auction, the assets or rights of the minor child, or become an assignee of credits or other rights against him or her, except in the cases of legal subrogation, bidding in probate cases or awards in court-authorized partitions;
- c) Entering, on behalf of the ward, into any contracts that might oblige him or her to personally practise certain acts except when the obligations contracted are necessary for his or her or her education, settlement or occupation;
- d) Receiving any gifts from the ward, directly or through an intermediary, by way of an act among living persons or due to death, if those have been given after his or her or her appointment and before the approval of the respective accounts, without prejudice to the provisions relating to testamentary bequests set out in paragraph 3 of article 2056.

There are other acts that the court must authorize a guardian to do, such as acquiring real estate for the child, accepting inheritances, filing legal suits, and making similar large financial decisions (Article 1821). If the guardian acts without authorization or commits any of the acts in Article 1820, the act is rendered **null**. This means that it will be as if the transaction did not happen (Article 1822).

Unlike parents, guardians also have the right to be paid for the guardianship. If the minor's parents did not establish the amount of payment, the court will decide on the amount (after hearing from the family council). The amount cannot be more than 1/10 of the net income of the child's assets (Article 1825). The guardian must also submit accounts to the court at the end of his or her management period if these documents are requested by the court (Article 1827). Additionally, the guardian is liable for any losses that he might cause to the ward if it was willful or actually his fault (Article 1828).

In some cases, a full guardian is not needed. For example, if the parents have only been excluded from managing their child's assets, the court can create a regime for managing the assets on behalf of the minor child (Article 1806). Instead of appointing a guardian, the court will appoint someone to manage the assets of the child. The **manager** has the same rights and duties as the guardian, but only has legal responsibility for a single issue in the child's life – managing the child's assets (Article 1850).

Like a full guardian, a person cannot be a manager if he is exempted or legally prevented from doing so. Additionally, Article 1849 states that a manager of assets cannot:

- ❖ Be incapacitated due to **prodigality** (which means spending too freely);
- ❖ Be bankrupt or insolvent,
- ❖ Have previously lost parental authority or been removed from guardianship because of an issue related to asset management; or
- ❖ Have been convicted as perpetrators or accomplices of crimes related to larceny, theft, fraud, abuse of trust, fraudulent bankruptcy or insolvency and felonies against property in general.

Finally, sometimes guardians can be removed by the court if they do not fulfill the duties “inherent in their position or reveal a lack of aptitude for the exercise thereof” (Article 1831, Article 1832). Even if a guardian does an outstanding job, the guardianship ends when the child reaches the age of majority or is legally emancipated (Article 1844). The guardianship also ends

if the child is adopted or if the parents are once again able to exercise parental authority (Article 1844).

2. Family Councils

In addition to court and the guardian, the **family council** is also responsible for the child. A family council is a body created by the court to oversee the performance of the guardianship duties (Article 1837). There are two voting members chosen from among child's relatives. These members are selected by considering their relationship to the child, as well as their age, place of residence, and the interest they have shown in the child (Article 1834, Article 1835). If there are no relatives, then the court will choose friends and neighbors of the parents or other people who may have an interest in the child to be members of the family council (Article 1835). Whenever possible, one of the voting members shall represent the child's paternal line and the other voting member will represent the child's maternal line (Article 1835). The members of the family council are not paid and they can be removed for the same reasons that a guardian can be removed (Article 1842, Article 1843). Like a guardian, being a family council member is a mandatory position (Article 1810).

One member of the family council is chosen to be the "**proguardian**." The proguardian monitors the action of the guardian. If possible, the proguardian should represent a different line of relationship than the guardian (Article 1838). The proguardian also acts as a back-up guardian, to help the guardian and be ready to replace the guardian if necessary.

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Article 1839: Other functions of the proguardian

Besides monitoring the actions of the guardian, the proguardian shall also be responsible for the following:

- a) Cooperate with the guardian in his or her guardianship duties such as managing certain assets of the minor child under the conditions established by the family council and in agreement with the guardian;
- b) Replace the guardian in his or her or her absences and impediments; in this case, the other voting member of the family council shall serve as a proguardian;

c) Represent the minor child in or out of court, when his or her or interests are in opposition to those of the guardian and the court has not appointed a special trustee.

The Family Council can be assembled by order of the court, by request of one of the members, or by the request of the guardian. It can also be convened by the request of any relative of the child, or the child himself if he is older than 16 years (Article 1840). If a person is absent without justification from the meeting, the absent member is liable for any damage suffered by the minor child (Article 1840).

If no one is able to exercise guardianship over a child, then the child is entrusted to **public welfare**. This means that the child enters an educational or welfare institution and the director of that establishment becomes the guardian. There is no family council and no guardian in this case (Article 1845).

Questions

1. Raul is the court-appointed guardian for Luis, a minor with a yearly income of \$10,000 from his inheritance. Raul wants to be compensated for being Luis's guardian. Is this allowed? How much can he be paid, if at all?
2. Raul also suggests Luis invest some of his inheritance in building a barn. However, the project is a disaster and ends up losing Luis some money. Is Raul liable?
3. Brigida needs a new guardian. Her uncle Leopoldo seems like a good fit, but he is bankrupt. May he be her guardian?
4. Brigida realizes that her guardian, Leopoldo, may be stealing from her. Her aunt Rosario is her progardian. What role does Rosario play?

Answers

1. Yes, he may be compensated. The court sets the amount after discussing with the family council, but it may not be more than \$1,000 a year (which is 1/10 of the net income of Luis's assets) (Article 1825).
2. Raul may be liable, but it is unlikely. Raul would only be liable if the loss he caused to Luis was willful or through fault. If Raul intended for Luis to lose money when he suggested that Luis invest, or if it was Raul's fault that the barn was not built properly, then he is liable. Otherwise, he is not (Article 1828).

3. Yes. Leopoldo can be Brigida's guardian but, because of his bankruptcy, he may not be her manager of assets (see Article 1849 and Article 1816).

4. According to Article 1839(c), Rosario must represent Brigida's interest in court against Leopoldo, unless the court has appointed a special trustee instead. If Leopoldo removed from being Brigida's guardian, Rosario will become the guardian instead.

V. ADOPTION

SECTION OBJECTIVES

- To understand the purpose of adoption and how adoption takes place.
- To explain who can adopt and who can be adopted.

Adoption is a legal proceeding where the adopter assumes the role of “parent” to the adopted child. An adoption can be made in four ways:

- 1) A declaration is made in the presence of a clerk of the civil registry;
- 2) In a will;
- 3) By public deed; and
- 4) By drawing terms of adoption up in court (Article 1733).

A child can be adopted by one person or by two people. Two people may not adopt the same child at the same time, unless they are married (Article 1854). Often, a child is adopted by the spouse of one of his natural parents. An adoption can be made at any time, before or after the birth or death of the child. If an adoption is made before the child’s birth, the **adopter** (the person adopting the child) has to identify the child’s mother (Article 1735). This makes sense, because otherwise it would be hard to know who the child is that is being adopted. An adult can also be adopted by the spouse of his natural parent, as long as he consents (Article 1737).

Adoption is **irrevocable** (Article 1738). This means that, once the adoption becomes legal, it cannot be undone. An adoption that does not correspond to the truth can be repudiated (or challenged) in court, however (Article 1739). This proceeding can be brought by the adopter or the adopted child (called the **adoptee**), by any other person who has a moral or patrimonial interest in the proceeding, or by the public prosecution service. Adoption can also be **annulled** by the court at the request of the adopted child if the adoption was based on an error or moral coercion. Only an error that significantly contributed to the adoption happening is considered relevant (Article 1740).

Adoption is established by court order (Article 1852). The court investigates the personality and health of both the adopter and the adoptee. The court also investigates the

adopter's ability to raise and educate the adoptee, the family and economic situation of the adopter, and the reasons behind the request for adoption (Article 1852). The court wants to make sure that the adoption is going to be in the child's best interests. The court will only grant adoption where there are real advantages for the child. The adoption must be based on legitimate reasons and must not involve unjust sacrifices for the other children of the adopter. Finally, it must be reasonable to foresee that a relationship similar to parentage could be established between the child and the adopter. In order to judge these matters, the adoptee must have been under the care of the adopter during a sufficient amount of time for the court to evaluate whether such a bond could be established (Article 1853).

Only certain people can adopt. Persons older than 30 years may adopt a child. If the adoptee is the child of the adopter's spouse, then the adopter only needs to be 25 years old. A married couple can adopt if they are both older than 25 and have been married for more than four years (Article 1858). For people over 50 years old, they cannot be more than 50 years older than the child they are adopting, except in exceptional cases (such as sets of siblings) (Article 1858). Adults older than 60 may not adopt a child.

Additionally, only certain people can be adopted. The child must generally be younger than 15 years old. In order to be adopted, a child must either be the child of the adopter's spouse *or* the child must have been entrusted to the adopter (Article 1859). A child under 17 years old can also be adopted if he has been **entrusted** to the adopter since he was 15 years old or younger. Being "**entrusted**" to the adopter is an intermediate step to full adoption. A court can entrust a child to the care of an adult in order to evaluate whether the adult would be a good adopted parent. While waiting for a formal adoption to happen the court can entrust the child to a couple, a single natural person, or to an institution in any of the following situations:

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Article 1856: Trust regarding future adoptions

Regarding a future adoption, the court may entrust the minor child to a couple, natural person or institution in any of the following situations:

- a) If the minor is a child of unknown or deceased parents;
- b) If there has been prior consent for the adoption;

- c) If the parents have abandoned the minor;
- d) If the parents, whether by action or omission, even if due to proven inability arising from mental illness, put in serious danger the safety, health, moral character or education or development of the minor.
- e) If the parents of the minor received by a private person or institution have revealed a clear lack of interest in the child, in terms of seriously compromising the quality and continuity of the affective links inherent in parentage for at least three months before the request for trust was made.

The adoptee must consent to the adoption taking place if she is older than age 12. This consent must be free of coercion and made of the child's free will. The spouse of the adopter must also consent to the adoption (as long as the couple is not legally separated). The parents of the adoptee must also consent, even if they are minors and do not exercise parental authority. However, the mother may not give her consent until six weeks after delivering the child (Article 1861). If the child's parents have died, the child's older relatives or guardian must consent if they are in charge of the child and live with him (Article 1860). In addition to consent, the judge *must* hear from all of the adopter's children who are older than 12, as well as the parents or siblings of the deceased parent (Article 1863). The goal is to determine that the adopter is a suitable parent.

The identity of the adopter is not disclosed to the parents of the child, unless the adopter formally declares that the identity can be disclosed. The natural parents can also oppose, in an explicit statement, any disclosure of their identity to the adopter (Article 1864). Once the adoption is final, the child acquires the status of "child of" the adopter and becomes part of the adopter's family. This means that the child no longer has a family relationship with his natural grandparents and relatives (Article 1865). The adopted child loses his last name and is given the adopter's family name instead (Article 1867). If the adopter requests it, the court can also modify the child's *first* name in exceptional cases (for example, if it would protect the child or helps the child integrate into the new family more easily) (Article 1867).

The adoption is not revocable, even if the adopter and adoptee agree that the child should be returned to his natural family (Article 1868). The adoption can only be reversed if consent to the adoption was never given or it was coerced (Article 1869).

Questions

1. Francisco is 55. He wants to adopt his nieces Marta and Odete after their parents pass away. Marta is 8 and Odete is 3. Can he adopt them?
2. Alfonso is 16. He has been entrusted to his uncle, Juan, since he was 14. May Juan adopt him?
3. Maria and Jose are giving their daughter, Rosa, up for adoption. Emelia is the adopter. Does Emelia have a right to find out who Rosa's natural parents are? Do Maria and Jose have a right to know the identity of the adopter?
4. Emelia has two other children, Rosa Elena and Carlos. Her adopted infant daughter is also named Rosa. Can Emelia change Rosa's name?

Answers

1. Yes. Usually, people over 50 may not be more than 50 years older than the adoptee. Francisco is more than 50 years older than Odete; however, the law creates a special exception for adopting sets of siblings like in this case (Article 1858).
2. Yes. Usually only children under 15 may be adopted, but a child under 17 can be adopted if he has been entrusted to the adopter since he was 15 years old or younger. Since Alfonso was 14 when he was entrusted to Juan, Juan may adopt him (Article 1859).
3. Maria and Jose will *not* be told Emelia's identity unless Emelia formally declares that her identity can be disclosed. Maria and Jose's identity will be told to Emelia, unless they explicitly state that they do not want this information disclosed to her (Article 1864).
4. If Emelia makes this request to the court, the court might allow it. Emelia could argue that it would help Rosa's integration into the family if she does not have the same name as an existing child (See Article 1867).

VI. ALIMONY

SECTION OBJECTIVES

- To understand what “alimony” is and when it is given.
- To explain how courts determine who owes alimony and what amount is given.

A few times in this paper the word “alimony” has been mentioned. **Alimony** is a financial obligation that one person owes to another, and it is the amount that is necessary for sustenance, shelter, and clothing. If the person receiving alimony is a minor, the amount must also include the cost of education (Article 1871). Alimony is paid proportionally to the means of the person who is paying it, and the needs of the person who is receiving it. For example, imagine that a father owes a duty of alimony to his son. The father is bankrupt and has no money but the son is being raised by his wealthy mother. In this case, the amount of the alimony paid by the father will likely be very little or nothing at all because the father does not have any funds.

Alimony can also be paid to a spouse. This is called **spousal alimony**. When calculating the amount of spousal alimony, the court considers many things, such as:

- ❖ The age and state of health of the spouses;
- ❖ The spouses’ professional qualifications and employment possibilities;
- ❖ The time that the spouses will have to eventually dedicate to raising of common children;
- ❖ The spouses’ income and profits; and
- ❖ In general, all the circumstances that might influence the needs of the spouse receiving the alimony and the possibilities of the one giving it” (Article 1884).

There are a few circumstances where alimony is typically paid. It is usually paid by divorced spouses or by absent parents (Article 1877). In some cases, siblings or uncles may need to pay alimony in order to take care of a child (Article 1877). Alimony is paid every month, unless there is a legal agreement specifying a different time period (Article 1873). The right to alimony cannot be pledged or transferred to a different person (Article 1876).

In the event of a divorce, certain people are not entitled to receive alimony. For example, spouses found culpable or guilty in the divorce sentence may not receive alimony. Also, if there is divorce by mutual consent, neither spouse may receive alimony (Article 1884). Sometimes the court will grant alimony to a spouse who is not legally entitled to it if fairness and equity demands it. The court takes into account “the duration of the marriage and the collaboration rendered by this spouse to the economy of the couple” (Article 1884).

The obligation to pay alimony stops when the liable payer or the recipient dies; when the recipient no longer needs the alimony; or when the person making the payments is unable to continue making them (Article 1881). For spousal alimony, the right to alimony ends when the recipient gets married again or if he or she is proven undeserving of its benefits due to his or her moral behavior (Article 1887).

Questions

1. Leo owes alimony to his ex-wife, Nina. Nina is trying to pay off some debts of her own and offers to give the bank the future alimony she will be receiving from Leo. Is this allowed?
2. Leo passes away. Do his children or his new wife owe Nina alimony?

Answers

1. No. The right to alimony cannot be pledged or transferred (Article 1876). Of course, once the alimony is paid to Nina it is her own money that she can spend the way that she wants. She can use the alimony to re-pay the bank of she chooses to.
2. No. The obligation of alimony stops when the liable payer or the recipient dies. This means that, once Leo dies, there is no further legal obligation by his family (Article 1881).

VII. REVIEW

SECTION OBJECTIVES

- To review the laws governing child-parent relationships, guardianship, adoption, and alimony in Timor-Leste.

In this paper, we learned how the court investigates and establishes the parentage of a child. The rules are slightly different for mothers and fathers, in part because it is often easier to learn the maternity of a child. This is because women physically give birth to the child. The mother's husband is assumed to be the father of the child, but this assumption can be refuted in certain circumstances.

Establishing maternity and paternity is important because parents have rights and obligations with respect to their children. They are responsible for giving their children food, shelter, clothing, and education, as well as providing for their health and safety. Parents also assume the rights and obligations of their children. However, there are some limits to a parent's ability to manage his child's assets.

If a child's parents have died or cannot exercise appropriate parental authority over the child, the court will appoint a guardian to do so. The guardian is usually a member of the child's family. The guardian is overseen by a family council. If there is no available guardian, the child is entrusted to government welfare or an educational institution to be taken care of.

Sometimes another person can adopt a child if the parents give authority for the adoption or are unable to parent the child. The court will entrust the child to the potential adopter for a period of time in order to evaluate the adopter's ability to be a good parent. Once the child is adopted, the adopter has all the same rights and legal duties as the natural parents. This permanently ends the child's legal family relationship with her natural parents. In most circumstances, adoption is irrevocable.

Lastly, parents and spouses often have a legal duty to provide alimony for their children or former spouse to live on.

For more information, please refer to Book IV of the Civil Code of Timor-Leste.

GLOSSARY OF SELECTED TERMS

Adoption: A legal proceeding for a person to assume the role of “parent” to a child. The person who becomes the parent is an “adopter.” The child received through adoption is the “adoptee.” Once an adoption is done it generally cannot be undone, although it can be annulled by the court depending on the circumstances of the case.

Alimony: a financial obligation that one person owes to another person. It is the amount necessary for food, shelter, and clothing. Alimony can be paid to a minor child (and will include the cost of education), or to a spouse.

Born Out of Wedlock: A child born to parents who were not married at the time of the birth.

Conceived Within the Marriage: If a couple is no longer together, this phrase refers to a child born less than 180 days after the marriage ended.

Declaring a Birth: To register the birth of a child with the government. The person declaring the birth should try to identify the child’s mother and list the woman on the registration document.

Entrust: When a court allows a child to be taken care of by an adult in order to evaluate whether the adult would be a good adopted parent. A child can be entrusted to a couple, a single family member, or an institution.

Entrust to Public Welfare: When the court allows an educational or welfare institution to take care of a child when there is no one available to be a guardian. The director of the organization or institution becomes the child’s guardian.

Family Council: A group of people organized by the court to oversee the performance of guardianship duties. The Family Council is also responsible for the child.

Guardian: A person appointed by the court to take care of a child whose parents are deceased, or who cannot exercise parental authority. A guardian has the same rights and duties as a parent but has several restrictions on how the child’s money can be used. The guardian is overseen by a Family Council.

Law of Alimony: Laws that create financial obligations on spouses or parents to financially support their children.

Legal Period of Conception: The time period 180 to 300 days before the birth of a child.

Manager: A person appointed by the court to manage a minor child's assets. The manager has the same rights and duties as the guardian but is only legally responsible for this part of the child's life.

Natural Parents: The individuals who conceived the child; also called "birth parents."

Parental Authority: Parents' responsibility for their child's well-being and upbringing, including taking care of the child's physical, intellectual, and moral development to the extent allowed by their resources.

Power of Representation: Exercising a child's legal rights and fulfilling a child's legal obligations. This is typically done by the child's parents. If there is a conflict between the interests of the parents and the child, however, the court can appoint a different person to represent the child's interests.

Proguardian: A member of the Family Council who monitors the actions of the guardian. The Proguardian is also a back-up who can help the guardian or replace the guardian if necessary.

Repudiate: To dispute or deny a claim. The actual mother of a child can dispute or deny another woman's claim that she is the birth mother of the registered child.

Ward: The term for a child taken care of by a guardian.