

Whose Child Is It? Rights and Responsibilities – Mock Court Case Journal.

The Task

The task that has been given to us for this module's second part of the portfolio is to choose a case study, one of the ones given to us for the first part of the portfolio (which was to write a letter to a judge either in defense or against a decision they have made relating to our chosen case) we must then act out a court scenario as if we all have a role in the case. We did not choose to use the case study that I included in my letter (five mothers suing the state of New York over the issue of mandatory vaccinations) instead we chose to do the case study of Taylor and Michael who are two people in a relationship that are living with Down's syndrome and both feel that they are ready for a baby while their parents disagree and believe that they are not ready to have a child and it is unlikely that they ever would be. For this task we must all take up specific roles in the court in order for it to run smoothly and make sense.

The Roles

The roles within our group were unfortunately decided on a day that I was unwell which meant that I could not take part in the decision making but luckily I was still assigned the role that I wanted anyway. The parts are as follows;

- Judge – Me
- Defendant (Taylor) – Saffron
- Defendant's Lawyer – Jaya
- Prosecution (Taylor's mother) – Lizzie
- Prosecution's Lawyer – Rachel

[Added after the case had been acted out] We did also have Lindsey's friend be the court usher and Lindsey acting as the press while recording the case.

As a class it was imperative that we all researched what our roles meant and how we would act them out in a believable and professional manner. To do this for my part as the judge I watched videos of real court cases while making sure my focus was on the judge and how he or she fit into

the court cases. I also found it useful when we watched The Children Act (2017) to watch how Emma Thompson's character acted and seeing the extra research she did before her cases really enlightened me as I was not aware judges did research prior to trials, I assumed they were told everything on the day in court. And although I did plan to do my own research anyway it was still interesting to know that it is what really happens.

Planned Research

The research that I will take part in for my role as the judge in our mock trial is going to include things such as any real life cases similar to this that also went to trial, in order to show me what decision was made in those cases and that will help me come to a decision for our mock trial in whether or not Taylor and Michael will be allowed to have their baby. I will also partake in research over the specific case study of Taylor and Michael and for this I will be mostly using the article¹ that was provided to us by Lindsey as an example for our judge's letter. I will look into if there have been any other cases of parents not wanting their downs syndrome child to have children of their own. A big part of my research will be the human rights and the rights of the child. As well as all this I will be sure to familiarize myself with Down's Syndrome as a disease and how it can affect Down's people wanting to have a child.

Carried-out Research

The Role of a Judge in Court

After looking on the national archive website² I have realised that there are many different roles a judge will play depending on what type of case it is. The three types of cases that were given on this website were;

- Crown Court cases
- Civil cases
- Family cases

Our case will be a family case as it is dealing with issues between families and the issues of children and whether they are able to be looked after. I have discovered that there is never a jury

¹ Murray, K. Couple with Down syndrome fights for parenting dream. 2016. <https://www.abc.net.au/news/2016-10-03/down-syndrome-couple-fights-for-right-to-have-children/7843590> [Accessed on: 10th May 2019]

² The National Archives. *The Role of a Judge*. 2012. https://webarchive.nationalarchives.gov.uk/+/http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Thejudicialsystem/DG_181788 [Accessed on: 13th May 2019]

in a family case, the judges do not wear robes and keep it much more informal than in Crown Court or civil cases. The judge must also be trained to deal with sensitive issues that may come up. In family cases the judges decision must always be based on what is in the best interest for the child. To find out what is in the best interest of the child the judge will listen to all arguments from both sides and must also hear opinions from any experts related to the case (in our case the expert will be a letter from Taylor's doctor). Below I have included a screenshot from the website explaining how Judges are able to interpret the law;

Judges interpret the law

Judges are independent from the police and the government, and cannot be told what to do, or have their decisions changed by ministers. If someone is unhappy with a judge's decision, they must appeal to a higher court.

Laws are created by Parliament, and it is the job of a judge to make sure that people are punished if they break those laws. But judges also apply 'common law', which is the law that has grown out of decisions by judges in court cases over decades and even centuries.

Decisions made by judges in higher courts are recorded, and judges on lower courts must use those decisions to help them make their own rulings in court cases.

This means that court cases are not treated randomly, and punishments for the same sort of crime are similar and fair, wherever they happen.

So my plan is to follow what is said on this website in order to know how to act when we go to court.

Taylor and Michaels Case + any Similar ones



Above is an image³ of Taylor Anderton and Michael Cox (the defendants in the case).

What is going to be debated in the court will be the fact that Taylor's mother believes that she and Michael will never be ready for a baby but the couple both believe they are. We decided as a group that we would not stick 100% to the article but will include other aspects such as making them from Wales rather than from Queensland, Australia and we have also decided to make it so Michael is high functioning enough to work 8 hours a week whereas Taylor is unable to work any. These decisions were made in order to have our case be more relevant to what laws and rights we will need to know if we become teachers in the UK and also to help with our arguments within the court we added more details to the couples lives.

I have been unsuccessful in my research to find a case of this issue going to court so have unfortunately been unable to know what decisions real judges have made about this.

Human Rights & The Rights of a Child

There are 30 articles within the Universal Declaration of Human Rights⁴. The ones that will be most relevant to this case are;

- Article 1 – all humans are born free and equal
- Article 2 – no one can be discriminated against the human rights
- Article 16 – any person of full age has the right to marry and start a family

There are 54 articles within the United Nations Convention on the Rights of the Child⁵. The ones that will be most relevant to this case are;

- Article 3 – the best interests of the child is put first
- Article 5 – respect the rights of the parent to provide guidance for the child
- Article 7 – a child must be registered at birth, have a name and nationality and be **cared for by their parents**

³ ABC News. *Taylor and Michael*. 2016. <https://www.abc.net.au/news/2016-10-03/taylor-and-michael-at-the-beach/7880566> [Accessed on: 10th May 2019]

⁴ United Nations. *Universal Declaration of Human Rights*. 1948. <https://www.un.org/en/universal-declaration-human-rights/index.html> [Accessed on: 16th May 2019]

⁵ Unicef. *The United Nations Conventions on the Rights of the Child*. 1989. https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?ga=2.16775152.753278197.1560117879-1642239797.1560117879 [Accessed on: 16th May 2019]

- Article 18 – both parents are responsible for the upbringing of the child and must always consider what is best for them, governments must support parents in doing this
- Article 19 – governments must protect children from violence, abuse, neglect and other mistreatment by any adult
- Article 23 – children with disabilities have the right to a full, decent life and must be supported by governments and their families
- Article 27 – children must have a good standard of living that meets their social and physical needs and must also support their development
- Article 32 – children must be protected from labour that could harm their development or education (I included this one as if the child was born with no disabilities there is a chance that they will become a young carer for the parents which in turn could in turn potentially harm their development and education)

The ways I plan to use these articles in the trial are as follows;

- Human Rights: Article 1, 2 & 16 – I will need to keep in mind that even though Taylor and Michael have Downs Syndrome they are still entitled to the same rights as anyone else, including Article 16.
- Children Rights: Article 3, 7, 18, 19, 27 & 32 – I must make sure that Taylor and Michael will love and care for the child as much as they possibly can and where they cannot they must allow other family members and their carers to provide the appropriate and necessary care to ensure that they are protected from becoming young carers to the point where it affects their development.
- Children Rights: Article 23 – I must make sure that if the child is born with downs syndrome then they must have their own decent life and have as much support around them as possible, especially from Taylor and Michael.
- Children Rights: Article 5 – Although it is my responsibility as judge to give the child the highest standard of living possible and ensure that every measure of support is given, I will also need to respect Taylor and Michael as the child's parents and give them freedom to make decisions where it is possible to.

Down's Syndrome Facts

- Infertility for Down Syndrome men is very common
- The chances of a woman with Down Syndrome having a child who also has the illness are 35-50%⁶

⁶ Canadian Down Syndrome Society. *Can people with Down syndrome have a baby?* <https://cdss.ca/down-syndrome-answers/can-people-with-down-syndrome-have-a-baby/> [Accessed on: 29th May 2019]

- The life expectancy of someone with Down's Syndrome is about 60 years⁷
- As Down Syndrome is a spectrum disease it means that depending on how high functioning or low functioning you are, you may or may not be able to take part in "normal" things⁸ that people without down syndrome can do such as drive, live alone, cook, work, etc.

Final Note Before Trial

After completing this research I now believe that my decision on Tuesday will be to allow Michael and Taylor their baby but I will also consider both sides of the argument in court before I fully commit to this decision.

⁷ Canadian Down Syndrome Society. *How long does a person with Down syndrome live?* <http://cdss.ca/down-syndrome-answers/how-long-does-a-person-with-down-syndrome-live/> [Accessed on: 29th May 2019]

⁸ Canadian Down Syndrome Society. *Down Syndrome Answers.* <http://cdss.ca/down-syndrome-answers/> [Accessed on: 29th May 2019]

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