

**Sajid Mohammed Abbas Khan**

**Module Code: BMLW 5018**

**Right to make healthcare decisions for children under 16 years**

"How much independence do children under 16 have in making decisions about their medical treatment in the UK?"

**PART B (1) and (2)**

It is settled law that every person of adult years and of sound mind has the right to determine what should be done with his or her own body; such that a person who touches another without their consent commits the offence of battery.<sup>1</sup> However, this principle raises complex questions about children, particularly in medical decision-making.<sup>2</sup> The legal and ethical issue surrounding the question of consent for children under the age of 16 years presents a complex issue in balancing several conflicting interests. On one hand, there is the best interest of the child and child autonomy while on the other hand there is the duty of parents to take care of their children and the role of medical practitioners to act in the child's best interest. At the heart of these conflicting interests is the challenge in determining whether a child is competent enough to make healthcare decisions. This question is well addressed in the case of *Gillick V. West Norfolk and Wisbech Area Health Authority*. [OBJ]

In this case, the health authority had published circular advising doctors that they could prescribe contraceptives to minors at their discretion and that the contraceptives could be prescribed to children under 16 without parental consent. An activist, Victoria Gillick opposed the said policy seeking a declaration that allowing doctors to prescribe contraceptives to children was illegal on the ground that it would encourage sex with minors and that it would be treatment without parental consent. The House of Lords was tasked with determining whether minors could consent to battery or assault. The court held that once a child attained a significant understanding of what was being proposed to them, then parental rights ceased to exist and the parent had no power to veto treatment. This test has become central in assessing whether a child has autonomy to make independent health care decisions.

Under the Children Act as read together with international instruments on the right of the child, a child's welfare is vested on the parents or the guardians, but the courts can sometimes intervene in instances where the best interest of the child may be endangered.<sup>3</sup> For example, a court may

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<sup>1</sup> McCombe, K. and Bogod, D.G., 2020. Consent and capacity: issues for paediatric anaesthesia. *BJA education*, 20(11), pp.377-381.

<sup>2</sup> Mitchell, A., 2023. Medical Consent for under-Sixteens: A Comparative Analysis. *UC Dublin L. Rev.*, 23, p.110.

<sup>3</sup> Children Act, 1989

intervene where a parent refuses life- saving procedures due to personal or religious belief.<sup>4</sup> In turn, while parental rights are protected, they are not absolute and the best interest of the child is paramount.<sup>5</sup> In the same length, a minor's refusal to treatment cannot override the consent to treatment of someone who has parental responsibility for the minor and also consent of the court.<sup>6</sup>

While the Gillick competence seems straightforward to legal experts, the same can be challenging to laypeople in navigating the complexity of the legal test, conflicting values as well as the lack of legal guidance. Firstly, the test requires an assessment of the child's maturity and understanding. [OB] This itself is subjective to the extent that it may be difficult for a parent or guardian to establish or develop without legal expertise or psychological training. Secondly, the Gillick competence is based and influenced by law which lay people may not understand. [OB] People are raised in different cultural and religious beliefs that shape their view on healthcare decisions. As such, while legal experts will mostly stick to the law, lay people may find it difficult to reconcile their personal beliefs with the law especially in instances when the law or medical advice offends such beliefs. Thirdly, due to the complexities of the legal system, lay people may encounter difficulties when approaching the same. Accessing the legal system or legal experts itself may be costly. The absence of accessible legal resources may lead to confusion, misunderstandings between family members and potential conflict with medical practitioners or legal experts. Further, the Gillick test may not be understood by lay people who have no legal knowledge and this makes it hard for them to know their rights and obligations to medical decision making.<sup>7</sup> In the same length, while the legal system is meant to safeguard individual rights and freedoms, access to legal aid is uneven.<sup>8</sup> The judicial system is itself stressful and overwhelming especially when a family is facing health related crisis. The legal process however intended to protect the child's better interest is lengthy, creating barriers to parents who seek speedy resolutions to pressing health concerns.<sup>9</sup> Further, the children may become the center of conflict within the family as parents are often afraid that the parents will have to approach the court again which in the end causes more psychological damage.

### **Part B (3)**

For the second part of this paper, I will be designing a flow chart to communicate the above legal problem to my audience. My primary focus is to ensure that the message is simple, clear and

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<sup>4</sup> de Alwis, L.B.L., 2014. Refusal by parents to give consent for medical treatment for their minor children on religious grounds. *Medico-Legal Journal of Sri Lanka*, 1(1)

<sup>5</sup> Parekh, S.A., 2007. Child consent and the law: an insight and discussion into the law relating to consent and competence. *Child: care, health and development*, 33(1), pp.78-82.

<sup>6</sup> Cave, E., 2011. Maximisation of minors' capacity. *Child & Fam. LQ*, 23, p.431.

<sup>7</sup> Zimmermann, N., 2019. Gillick competence: An unnecessary burden. *The New Bioethics*, 25(1), pp.78-93..

<sup>8</sup> Irvine, C., 2020. What do 'lay' people know about justice? An empirical enquiry. *International Journal of Law in Context*, 16(2), pp.146-164

<sup>9</sup> Clemente, M. and Padilla-Racero, D., 2020. The effects of the justice system on mental health. *Psychiatry, Psychology and Law*, 27(5), pp.865-879

easily understandable. The flow chart will provide a visual approach breaking down complex legal issues to more digestible content that can be understood without any further need to seek legal advice. I opted to use the flow chart because it presents information in a step-by-step manner with each consequence leading to another. For instance, the question “can the child understand medical treatment, if yes, it will lead to another question and if no it will also lead to something different. This step-by-step analysis presents a simple breakdown that is easily understandable. Save for this, the flow chart is easy to visualize thus making it easier to grasp.

Preparing the resource was not an easy task especially in terms of clarity and simplification. Legal concepts are normally complex and made of nuanced language that may be difficult to translate to a lay person. Oversimplifying this meant that I was at risk of losing the original meaning or rather the essential details which would otherwise be important. Further, the I was faced with the risk of providing too much information in a bid to explain the details and this had the risk of overwhelming the audience. Another challenge was on tone and language; lay people may not necessarily know all the terms used in legal proceedings for example competence, consent or parental responsibility even though common in the legal context. Ensuring the right authoritative but approachable tone was key in ensuring the resource was reliable and accessible. Lastly, I faced a challenge in determining how the resource could be made useful. The purpose was to develop something that would be useful for lay people. Therefore, I had to consider typical questions parents and minors can ask and design the flowchart based on these scenarios.

Class feedback was very helpful in improving my resource particularly in terms of its readability, organization and on the concepts that would be easily understandable to laypeople. First, I had more legalistic labels, like ‘paramountcy’ and ‘Gillick competence,’ which I believed are crucial. Nevertheless, the classmates noted that such terms could be rather misleading to a lay person. Accordingly, I had to rewrite the complex terms, using plain language, but preserving the legal meaning of words. For example, “Gillick competence” was changed to “Does the child understand the treatment?” This made it easier to go through the flow chart. The feedback highlighted the need to apply the information in practice, and so I added a small example at each decision-making stage as to how the information would be applied in practice. It was useful to be able to incorporate the class insights into making a more efficient and friendly source of information for the public.

Reflecting on my final product, I think that the flow chart ensures the understanding of the key legal aspects regarding children’s healthcare decisions by the laypeople. In the context of the present project, I have simplified such legal concepts as Gillick competence and parental consent using plain language and illustrations so that parents and young minors would be able to understand their roles and rights in medical decision-making. The step-by-step structure with brief explanations enables users to consider possible routes without getting lost in legal jargons. Moreover, the use of the pictograms gives an obvious clue, and thus offering directions on when one might need to seek the consent of a parent or when they might need intervention from the court. Nevertheless, if the resource is to be developed further, I would add real-life cases or

situations to enhance the resource's applicability in practice. Although the flow chart helps to visualize legal options, it is also important to provide a couple of cases to make users understand the presented information in their context. I would also incorporate the flow chart to cover more specific issues as the need arises, including issues of treatment that might be necessary to save the patient's life or issues of culture and religion. Last, I could consider an online, clickable version where users make choices based on their cases and get the result along with more information.

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## Part A

