

## CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

SEPTEMBER 2020

LEVEL 3 - UNIT 7 – FAMILY LAW

### Note to Candidates and Learning Centre Tutors:

The purpose of the suggested answers is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the September 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

## CHIEF EXAMINER COMMENTS

Many candidates had studied the Unit Specification and consulted past question papers and Chief Examiners' Reports. These candidates demonstrated a wide range of knowledge and understanding, and were able to apply their knowledge to the scenario questions with some skill.

General suggestions made in previous Chief Examiner Reports remain important and include:

- Knowledge and application of case law is essential in a Law question paper.
- Understanding the 'significance' of a judicial case does not equate to knowing the facts of the case. The case might establish a test or lay down guidelines, and these matters then indicate the 'significance' of the case.
- Know the Unit Specification well and avoid relying on material that is not contained in the Unit Specification.
- Be prepared to 'explain' or 'describe' as well as to 'state' or 'name'. The former require more detail in your answer

- Key legislative provisions should be known as closely as possible to the exact wording of the legislation.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Section A

#### Question 1

Most candidates were able to cite the Marriage (Same Sex Couples) Act 2013 accurately.

#### Question 2

Good answers gave a clear definition of a pre-nuptial agreement, noting that it is concerned with finances and property in the event of the breakdown of the marriage or civil partnership. Candidates were generally able to identify the factors indicating validity, but fewer could cite the case of Radmacher v Granatino (2010) as the Supreme Court authority on this.

#### Question 3

Candidates performed well on this question and were able to state Articles from the ECHR. Candidates should pay attention to the precise wording of each Article. For example, Article 8 ECHR covers the right to 'respect' for one's private and family life.

#### Question 4

- (a) The best answers stated that the Gender Recognition Act 2004 allows those suffering from gender dysphoria to legally change their gender. Many candidates provided too general answers which did not focus on the law. Credit was given to candidates who stated that the Act allows a person to obtain a new birth certificate.
- (b) Many candidates were able to explain that the Civil Partnership, Marriages and Deaths (Registration) Act 2019 allows opposite sex couples to form civil partnerships. This question is a reminder for candidates to remain up to date on legal developments.

#### Question 5

- (a) Most candidates could state the definition of parental responsibility and provide the statutory source in s.3(1) Children Act 1989 (CA 1989).
- (b) This was answered well by most candidates.

#### Question 6

This question was answered well by most candidates. Those who did not achieve full marks often had not focussed on the word 'consequences' or provided inaccurate statements on the effect of judicial separation on an existing will.

#### Question 7

This was a challenging question and required specific knowledge of s.10(4) CA 1989. All candidates should review this provision, noting that the legal father can apply for any s.8 CA 1989 order, regardless of whether he has parental responsibility.

### **Question 8**

Candidates performed generally well on this question. Good answers focused on the word 'consequences'. Candidates who did not perform as well tended to interpret the question as the 'differences between civil partnership and marriage'. Candidates who performed well focused on 'legal' differences, as the question required. The Civil Partnership Act 2004 should have been cited in the answer.

### **Question 9**

This question was not answered well by the majority of candidates. All candidates are reminded that a Mediation Information and Assessment Meeting is not a mediation session per se, but a meeting where a trained mediator assesses whether a case is suitable for mediation. Those who attend are provided with an explanation of the process of mediation.

### **Question 10**

Candidates are reminded of the importance of knowing key cases in the Unit Specification. Candidates who answered this well focused on the principles that this case stated, while weaker answers focused on the facts of the case.

## **Section B**

### **Scenario 1**

1.

Most candidates performed well on this question. Good answers started with the presumption stated in Stack v Dowden (2007) that the sole legal owner is presumed to hold the entire beneficial interest in the property. Good answers then applied the test in Lloyds Bank v Rosset (1991) which remains the appropriate test for parties such as Helen. Candidates are reminded to know this test thoroughly and be able to apply it. The best answers balanced explanation of case law with attention to the facts, and cited s.14 and s.15 TOLATA 1996 as the means for Helen to seek an order for sale and/or a declaration of her interest.

2.

This was a challenging question for some. Most candidates were able to explain what a cohabitation contract is and identify some elements which would assist in its being upheld in a court. The better answers noted that if there was a valid cohabitation contract, this would override application of property law and equity, which in the circumstances might have helped Helen, or not, depending on its terms.

3.

Candidates performed well on this question and were able to identify the three orders under s.8 CA 1989. Good answers stated the order, defined it, and then applied it to Toby and the issues raised in the question.

4.

Candidates showed overall strong ability to apply the welfare checklist. The best answers were those that really focused on the facts of the question, showing sensitivity to Toby's age, the needs of a child of that age, and the impact of a move to Germany by Graham. Candidates are reminded to focus (as per the question) on 'relevant' factors. In this scenario, Toby's wishes and

feelings were much less important than his needs and the capability of his parents to meet his needs. Many candidates spent time explaining 'wishes and feelings' only to conclude that it was not relevant!

## **Scenario 2**

1.

Performance on this question was strong. Candidates who knew the law of nullity were able to apply it easily to the facts of the case. A noticeable number of candidates missed out on some significant facts, such as the fact that Aliyah suffers from a medical condition and relies on her parents for support. Some candidates continue to confuse the test in Hirani v Hirani (1982) which is a subjective test, with the test in Livingstone-Stallard v Livingstone-Stallard (1974) on divorce which is a subjective and objective test.

2.

Candidates generally perform well on questions requiring knowledge and application of the MCA 1973 property orders – the answers to this question were no exception. Weaker answers did not apply the orders to the facts in detail. For example, a periodical payments order would be appropriate because Jamal earns more than Aliyah, Aliyah has no income, and she will need money for daily living expenses until such time as she is earning. Candidates need to strive for this kind of specific application. Some candidates simply listed orders without considering their relevance to the facts which prevents achieving full marks.

3.

The s.25 MCA 1973 factors were applied well. A surprising number of candidates did not note that Aliya's medical condition could be considered under 'physical or mental disabilities'. As noted above for Question 2, candidates should focus on the facts of the case and provide as much detail as possible when discussing each factor.

4.

While most candidates can discuss clean break orders in general terms, some specific points of law are often omitted. Section 25A MCA 1973 places a duty on courts to consider whether a clean break is appropriate; if not, the court must go on to consider a deferred clean break order. The latter would have been appropriate here, as Aliyah is studying and will soon be able to support herself.

## **Scenario 3**

1.

Candidates generally performed well on the divorce issues and were able to identify the fact of behaviour as the appropriate one to prove irretrievable breakdown. Candidates should note that the test in Livingstone-Stallard v Livingstone-Stallard (1974) is a partly objective and partly subjective test. See comments for Scenario 2, Question 1 (above).

2.

Candidates were generally strong on defining parental responsibility with its statutory source. While most candidates correctly stated that Dylan does not have parental responsibility for Mia, there was some confusion about Tyler. While Dylan and Lisa were not married when Tyler was born, they did marry

after he was born. By marrying Lisa, Dylan acquires parental responsibility for his son, Tyler.

3.

- (a) Most candidates were able to state that Lisa would want to apply for a child arrangements order under s.8 CA 1989. Good answers went on to define this order and stated that Lisa would want an order for Mia and Tyler to live with her.
- (b) Many candidates found this a challenging question. Candidates who performed well paid close attention to the facts in the scenario. Good answers stated that Dylan would also apply for a child arrangements order to have contact with Mia and Tyler, as the scenario tells you that he wants to 'spend time' and 'see' the children. For Tyler, Dylan could apply under s.10(4) CA 1989; he could apply under s.10(5) with regards to Mia, because she has lived with him for three of the last five years. The best answers noted, however, that his behaviour and abuse of alcohol will need to be considered, as well as the effect his behaviour has had on the two children. A court will, of course, put the welfare of the children as its paramount consideration, balancing this with the presumption that the involvement of Dylan in their lives is likely to promote their welfare unless there is evidence to the contrary. The best answers considered various types of contact that might be appropriate in the circumstances.

4.

Most candidates were able to gain good marks for this question. All candidates should note that when discussing a 'Gillick' competent child, reference should be made to the case of Gillick v West Norfolk and Wisbech AHA (1985). Good answers also noted that the children's wishes and feelings will be taken into consideration in any case under s.1(3) CA 1989. Candidates were able to apply this well to the facts, some of the more comprehensive answers noting that the courts generally favour contact with parents, that a court will likely give greater weight to Mia's wishes considering her age, and that it would be important to determine if the children were genuinely speaking for themselves.

## **SUGGESTED ANSWERS**

### **LEVEL 3 - UNIT 7 – FAMILY LAW**

#### **SECTION A**

1. The statute which establishes that same sex couples can marry is the Marriage (Same Sex Couples) Act 2013.
2. A pre-nuptial agreement is a statement of intention on the part of the parties to a marriage (or civil partnership) as to how their property and finances will be handled in the case of a divorce or dissolution. In the case of Radmacher v Granatino (2010), the Supreme Court held that a pre-nuptial agreement can be upheld if it has been entered into willingly by both parties, with no evidence of duress, and if it is fair in all the circumstances to uphold it.

3. The source contained in the Human Rights Act 1998 is the European Convention on Human Rights. It contains a variety of rights relevant to family law such as Article 8, the right to respect for a private and family life; Article 12, the right to marry and have a family; Article 6, the right to a fair hearing.
4.
  - (a) The Gender Recognition Act 2004 provides that a person with gender dysphoria can legally change their gender.
  - (b) The Civil Partnership, Marriages and Deaths (Registration) Act 2019 allows for couples of the opposite sex to form civil partnerships.
5.
  - (a) Under s.3(1) Children Act 1989 (CA) 1989 parental responsibility is defined as all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
  - (b) Two people who do not have automatic parental responsibility but who can acquire it would include: an unmarried father of the child who is not named on the child's birth certificate, a step-parent, a grandparent or other relative, a guardian or special guardian.
6. An order for judicial separation means that the parties to a marriage are no longer under an obligation to cohabit. Other legal consequences include: the parties are still legally married and not free to remarry or form a civil partnership; the parties are able to apply for financial orders against each other; an existing will of either party remains in force; finally, if one party to the marriage dies without a will, the other party will not inherit anything.
7. S.10(4) CA 1989 stipulates who can apply for any s.8 CA 1989 order. It includes:
  - the child's parents (regardless of whether the father has parental responsibility);
  - the child's guardian or special guardian;
  - a step-parent who has parental responsibility;
  - anyone who is named in a Child Arrangements Order as the person with whom the child is to live.
8. Civil partnerships are governed by the Civil Partnership Act (CPA) 2004 and result in a wide range of legal consequences. A civil partnership creates a legal union that comes with both legal responsibilities and benefits for the parties, including: the parties to a civil partnership gain the right to financial support from each other both during the partnership and following its dissolution. The parties gain the right to end the partnership formally by means of a dissolution order, separation order or order of nullity. Following these, the parties can apply to a court for financial and/or property orders. A party to a civil partnership gains property rights such as the right to occupation as a result of home rights, even if that party is not a legal owner or beneficiary of a trust. Regarding children, the parties to a civil partnership gain automatic parental responsibility for children born during the partnership.

9. A 'MIAM' is a meeting where a trained mediator assesses whether a case is suitable for mediation and where the process is explained. The applicant for a financial or child order must attend the session, and the respondent is invited to attend but is not obliged to do so.
10. Stack v Dowden (2007) established two basic principles for establishing the property rights of cohabitants where there is no declaration of trust. First, where the property is in the sole legal ownership of only one party, it is presumed that that party holds the entire beneficial interest. Second, where the property is in joint legal ownership, it is presumed that the beneficial interest is shared equally. Both presumptions are open to being rebutted with clear evidence. This is often expressed as 'equity follows the law.'

## **SECTION B**

### **Scenario 1 Questions**

1. Graham is the sole legal owner of the house where he and Helen lived. Consequently, it is presumed that he holds the entire beneficial interest. The case of Stack v Dowden (2007) establishes the presumption that (where there is no evidence of a declaration of trust) a sole legal owner holds the entire beneficial interest. This presumption is rebuttable, though evidence will have to be presented to establish this, and it is not an exercise 'to be lightly embarked upon', as per Lady Hale in Stack v Dowden.

Helen will have to rely upon Lloyds Bank v Rosset (1990) to establish that she should have a beneficial interest. If there is evidence that she and Graham held a common intention to share the beneficial interest, and if Helen acted on this to her detriment, then a court will require Graham to hold Helen's interest on a constructive trust. Alternatively, Helen may demonstrate that she made direct contributions to the purchase price of the house. In both cases, if Helen makes out a case that she is entitled to a share of the house, the court will go on to quantify her share by looking at the 'whole course of dealing' between her and Graham. The constructive trust is now the preferred method to protect a claimant's interest in family home cases.

Applying this, Helen has contributed to the mortgage payments which would count as having made direct contributions to the purchase of the house. Quantification of her share would take into consideration the fact that she has contributed to bills, though the fact that she and Graham have not shared their finances might affect her share of the property as it did in Stack v Dowden. Helen can apply under s.14 Trusts of Lands and Appointment of Trustees Act (TOLATA) 1996 to establish her interest and to seek an order to sell the house. This would benefit her as she would then be able to put down a deposit and resettle herself in new accommodation. The court will consider the factors in s.15 TOLATA 1996, such as the purpose the house fulfilled, the welfare of Toby, and the interests of the mortgage lender.

2. A cohabitation contract is a written agreement between two people who cohabit (but are not married or civil partners) which seeks to regulate their financial and property rights during and after the relationship.

Helen and Graham may have formed a valid cohabitation contract. In order to determine this, certain criteria must be satisfied. The agreement must relate to the property and/or the couple's finances and cannot relate to their living arrangements (Sutton v Mishcon de Reya and Another (2004)). The agreement must also be in writing and must evidence that Helen and Graham intended to create legal relations. Both parties must have taken independent legal advice. Finally, there must be no evidence that either Helen or Graham acted under duress or undue influence in signing the contract.

If these elements are present, the cohabitation agreement may be upheld and Helen would not have to rely on the rules of property law and trusts.

3. Helen can make an application under s.8 Children Act (CA) 1989 for one or more of the following:
  - a Child Arrangements Order – this would specify who Toby will live with and have contact with, and when this will take place. Helen will want to apply for this order to regulate her current contact arrangements with Toby; in due course she may want an order to stipulate that Toby live with her.
  - a specific issue order – this will address the issue of Toby's diet.
  - a prohibited steps order – this would prevent Graham taking Toby out of the UK without Helen's permission.
4. The welfare checklist lays out a number of factors that a court will consider when carrying out its duty to make the child's welfare its paramount consideration. In Toby's situation the court might consider:
  - The child's age, sex, background and other characteristics: Toby is a small boy of only four years. He is therefore entirely dependent on his parents to provide for his needs. He has spent considerable time with Helen, as she has only worked part-time.
  - The child's physical, educational and emotional needs: Toby is only four years old and has many needs that he cannot meet himself. He needs a stable home and parenting situation; he will soon be starting school and that should be a smooth transition for him; he also needs a healthy and balanced diet suitable to a small child who was born prematurely and has not yet reached average height and weight.
  - The likely effect of any change in circumstances on the child: Toby has lived all his life with both his parents, and this stability should be preserved as much as possible. A move to Germany may be very destabilising for him.
  - The capability of the parents to meet the child's needs: there is nothing to suggest that either Graham or Helen is not capable of caring for Toby. However, Graham must prove to the court that he is able to put Toby's needs prior to the wishes of his new partner.

### **Scenario 2 Questions**

1. Aliyah may be able to establish that her marriage to Jamal is voidable. A voidable marriage is one which satisfies one of the grounds under s.12 Matrimonial Causes Act 1973 (MCA) 1973. A voidable marriage is valid

until such time as it is annulled. Aliyah may be able to establish that she married without giving her full and free consent. Under s.12, a marriage is voidable if one of the parties did not consent to the marriage as a result of duress, mistake, unsoundness of mind or some other reason. The law on duress is now established in the case of Hirani v Hirani (1982). Whether or not a person married under duress must be assessed subjectively – asking what the effect of the threats were on the applicant. The emphasis is on the effect of the threat, and not the nature of the threat. An earlier case, Szechter v Szechter (1970), applied an objective approach, asking whether the applicant's will had been overborne by a genuine and reasonably held fear caused by threat to life, limb and liberty.

Applying this, it can be argued that Aliyah did not fully consent to marry Jamal, as she was deeply affected by the fear of losing her parents' support as well as that of her family and community. This mirrors the case of Hirani v Hirani (1982) where the applicant feared being cast out by her family if she did not agree to marry according to her parents' wishes. Aliyah's health condition may have created a greater anxiety in terms of losing parental support and put added pressure on Aliyah to consent.

An application for a nullity order on this ground must be brought within the first three years of marriage, which Aliyah satisfies as the marriage was formed two years ago.

2. Aliyah can apply for financial orders under the MCA 1973 following the annulment of her marriage, just as she would be able to following a divorce. The financial orders are found in Ss22-24 of the MCA 1973.

Based on the facts of the scenario, Aliyah might apply for:

Maintenance pending suit: Aliyah has no income at the moment and will need financial support pending a nullity order. This will provide her with periodical payments until a periodical payments order (below) can be made.

Periodical payments order: Jamal earns a good income and Aliyah has no income at the moment. Periodical payments will enable Aliyah to live and meet her normal living expenses until such time as she is able to earn an income and support herself. Aliyah is training to be a Legal Executive and so has earning capacity. Periodical payments can be varied so that when Aliyah is earning her own income, the payments can be reduced or stopped.

Lump sum order: Aliyah will need a sum of money for a deposit to rent a flat, and a lump sum can provide this. Jamal has savings that could be used for this purpose. He may also have access to capital as the part-owner of the restaurant with his two brothers.

Pension order: Jamal has a local authority pension which is described as a 'good' pension, and Aliyah has no pension at all. Aliyah may apply for a pension sharing order under which Jamal's pension will be split at the time of the annulment and a portion of it transferred to Aliyah so that she can begin to build her own pension fund.

Sale of property: The family home is worth £200,000 and is mortgage-free. The court could order that the house is sold and a percentage of the proceeds awarded to Aliyah, so that she can arrange her own accommodation independently of Jamal.

3. In determining whether to make an order, and which order to make, the court will have regard to the checklist of factors found in s.25 MCA 1973. Relevant factors include:

Resources: Jamal has the house in his sole name worth £200,000; savings of £25,000 and part-ownership of a restaurant business. He also earns £32,000 and has a work-based pension. Aliyah has no income at the moment, though she should be able to earn when she has qualified as a Legal Executive.

Needs and obligations: Both parties need somewhere to live and will have normal living expenses of food, transportation, clothing etc. Aliyah has college fees to pay, but these are presumably only temporary.

The length of marriage and ages of the parties: Aliyah and Jamal are both young and have the potential to become financially independent of each other. They have been married only two years.

Physical or mental disabilities of either party: Aliyah is a diabetic and has been dependent on her parents for support. Whether this will impact on her financial needs, or her ability to earn an income, is not clear.

Loss of benefit: As a result of the annulment, Aliyah risks the loss of benefitting from Jamal's pension.

4. A 'clean break' order results in the parties being financially independent of each other following divorce, dissolution or annulment. Under s.25A MCA 1973, a court considering an application for financial orders must consider whether a clean break is appropriate. If it is not, the court must then consider whether periodical payments can be made for a limited time only – a 'deferred clean break' in that case.

Clean breaks are typically applied to couples who have no children and who have the ability to support themselves independently. Clean breaks are often suitable for young couples with sufficient and similar incomes.

Aliyah and Jamal are both young and they have no children. Jamal is able to support himself, and while Aliyah cannot support herself at the present time, she should be able to do so in the near future. A deferred clean break order might be suitable for Aliyah as it will mean that she can begin a new life independently of Jamal.

### **Scenario 3 Questions**

1. The law on divorce is governed by the Matrimonial Causes Act (MCA) 1973. Under s.1(1), there is a single ground on which a divorce can be obtained, namely the irretrievable breakdown of the marriage. The single ground must be proved by reference to one or more of the five facts found in s.1(1)(a)-(e): adultery, the respondent's behaviour, desertion, two-year separation with the respondent's consent, and five-year separation.

Lisa will need to argue that her relationship with Dylan has irretrievably broken down, and that there is no possibility of a reconciliation. She will base this on s.1(2)(b): that Dylan has behaved in such a way that Lisa cannot reasonably be expected to live with him. Lisa and Dylan have been married for more than one year, so Lisa can bring her application.

The case of Livingstone-Stallard v Livingstone-Stallard (1974) establishes that the test for proving unreasonable behaviour is partly objective and partly subjective: would a reasonable person conclude that the respondent has behaved in such a way that this applicant cannot reasonably be expected to live with the respondent, taking into account the personalities and characteristics of both parties? Case law indicates that behaviour that satisfies the test includes violence, substance abuse, verbal bullying.

Lisa would rely on Dylan's abuse of alcohol, drunkenness in front of the children, and the incidents at her parents' house. Dylan has withdrawn from the marriage and family life causing stress to Lisa. Dylan's behaviour has frightened the children, and he has threatened Lisa's father. These examples suggest that Lisa would have a strong case, as Dylan's behaviour is such that it is reasonable to conclude that Lisa should not be expected to live with Dylan.

2. Parental responsibility is defined in s.3(1) Children Act (CA) 1989 as all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. Dylan is claiming to have 'rights' with regards to Mia and Tyler; whether this is true depends on whether he has parental responsibility for them.

A father who is married to the mother at the time of the child's birth has automatic parental responsibility for the child. If the father subsequently marries the mother, then he acquires parental responsibility through the act of marriage. Therefore, despite the fact that Dylan was not married to Lisa when Tyler was born, his marriage to Lisa after Tyler's birth means that he has parental responsibility for Tyler. Having parental responsibility for Tyler means that Dylan has the right to be involved in decisions about Tyler's care and upbringing, including decisions about education, healthcare and religion. It also means that Dylan has responsibilities towards Tyler.

Dylan is Mia's step-parent. Step-parents do not have automatic parental responsibility for their stepchildren and can only acquire it through the mother or via a court order. The only way Dylan might have 'rights' with regards to Mia is if he has already entered into a made parental responsibility agreement with Lisa, or if he has obtained a parental responsibility order under s.4 CA 1989.

3. (a) Lisa should apply for a Child Arrangements Order under s.8 CA 1989. A Child Arrangements Order stipulates who a child will live with, spend time with and have contact with, and when the child will do these things. Lisa will apply for Mia and Tyler to live with her.
- (b) Dylan can make his own application for an order under s.8 CA 1989. Under s.10(4) CA 1989, he can apply for any s.8 order for Tyler

because he is Tyler's legal parent. He can apply for a Child Arrangements Order for Mia under s.10(5) CA 1989, because she has lived with him for three out of the past five years.

He has demanded to see and spend time with the children and so may apply for a Child Arrangements Order under s.8 to 'spend time with' and 'have contact with' Mia and Tyler. Contact can take various forms, including direct contact, indirect contact (via emails, texts, phone calls) and supervised contact. Courts are generally eager for children to have contact with their parents. The court will be guided by the welfare principle in s.1(1) CA 1989, that the welfare of Mia and Tyler is the court's paramount consideration. The presumption that their welfare is promoted by having contact with both Lisa and Dylan can be rebutted on evidence that there is a risk of the children being harmed.

The court will consider Dylan's abuse of alcohol and the unpredictable nature of his behaviour, as well as his absences from home. They will also consider the effect his behaviour towards their grandfather has had on Mia and Tyler. The court will consider the various types of contact they can award in addition to direct contact, such as indirect contact (via emails, text and telephone) and supervised contact.

4. In making an order under s.8 CA 1989, the court will always apply the welfare checklist under s.1(3) CA 1989. The first factor in that checklist is the ascertainable wishes and feelings of the child, considered in the light of their ages and understanding. Tyler is six years old and still quite young. Mia is 10 years old and her wishes and feelings are likely to carry more weight with the court than Tyler's. She is, additionally, not Dylan's daughter. Both children's views will be considered – the question is how much weight the court will give to those feelings.

In the case of Gillick v West Norfolk and Wisbech Area Health Authority (1985), the House of Lords held that children who have sufficient maturity and understanding are capable of making decisions regarding their own welfare, even if this is contrary to the wishes of the parents. There is no particular age at which a child becomes 'Gillick competent', and each child must be assessed individually.

The court may therefore consider Mia's wishes and feelings and give less weight to Tyler's views. However, the court will not want to separate the children if this would have a detrimental impact on their welfare.