HEALTH LAW AND ETHICS FOR POST-PRIMARY STUDENTS IN WALES (HEAL)

**STUDENT LEGAL BUNDLE**

**UNIT 3: HEALTH AND THE LAW IN WALES**

**MOCK TRIAL**

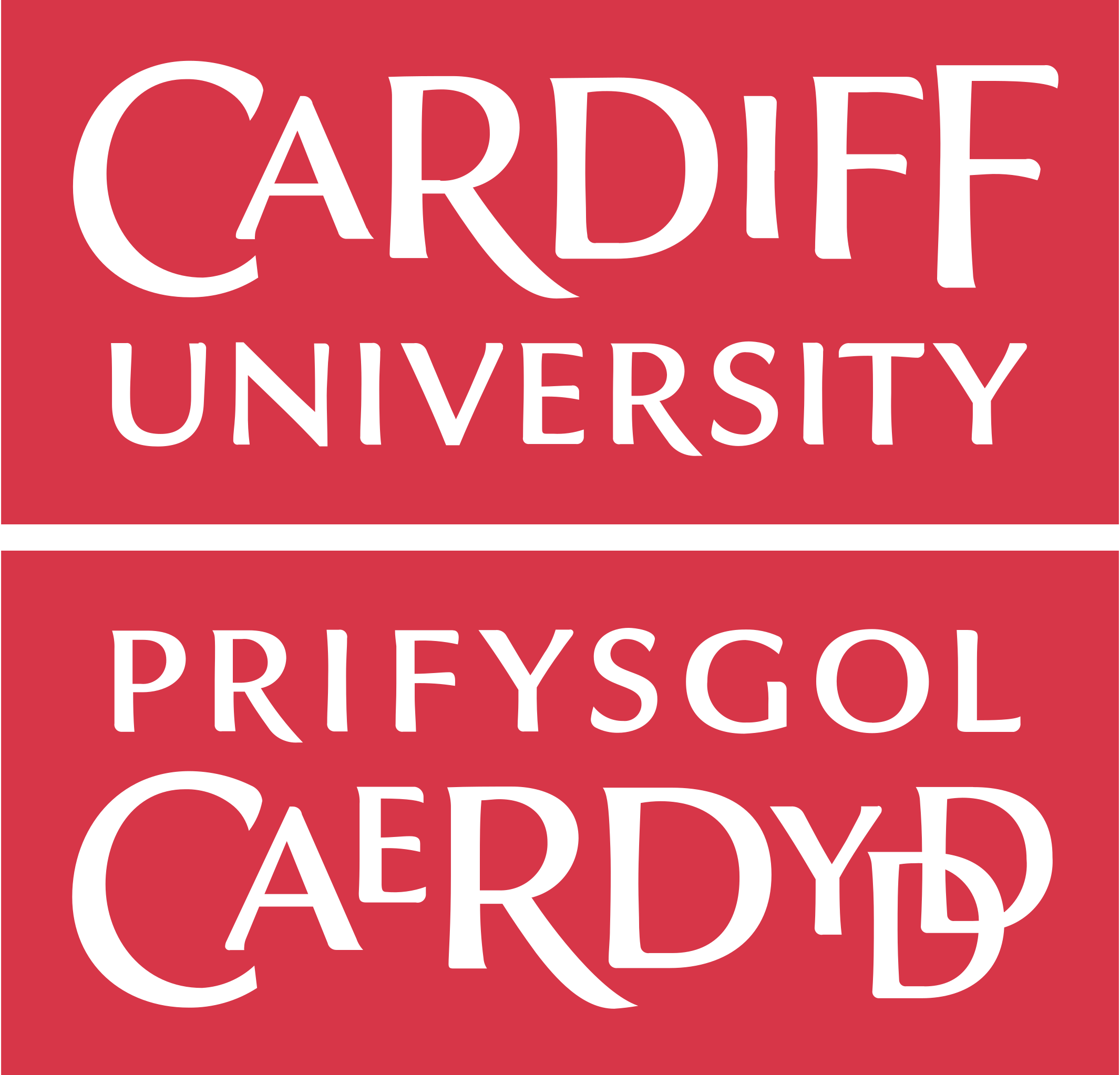
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**MOOT AGENDA (9 June, Law Building)**

8.30 - 9.00: ARRIVAL (Law Building reception)

9.00 - 9.15AM: INTRODUCTIONS – by Professor John Harrington and Dr Barbara Hughes Moore (LT 0.02)

* Allocation of Student Groups
* Student receive the Legal Pack

**9.15-9.30 Interviews with students/Paige Franklin**

9.30 – 10.00AM: ACTIVITY 1: PREPARATION FOR CLIENT CONFERENCE

* Group 1: Room 1.29
* Group 2: Room 1.28

10.00AM – 10.30AM: ACTIVITY 2: CLIENT CONFERENCE

10.30AM – 10.45AM: BREAK (**interviews with students/photos**)

10.45AM – 11.45AM: ACTIVITY 3: PREPARATION FOR CROSS-EXAMINATION AND DRAFTING SKELETON ARGUMENT

* Students to submit skeleton arguments by 12.00 noon

11.45AM – 12.30 AM: LUNCH (**interviews / photos**)

12.30AM – 2.15PM: ACTIVITY 4: MOOT

* 12.30pm – 12.40pm Introductions (Claimant) – facts, main players, case overview
* 12.40pm – 12.45pm Introductions (Defendant) – case overview
* 12.45pm – 12.55pm Cross Examination of Ms Maryam Begum
* 12.55pm – 1.05pm – Cross Examination of Dr Amir Khan
* 1.05pm – 1.35pm – Legal Arguments
* 1.35pm – 1.45pm – Short recess
* 1.45pm – 2.00pm – Summary judgement

2.00pm – 2.20pm **Interviews with students/Paige**

2.20PM -2.30PM: CLOSING AND THANKS: Professor John Harrington and Dr Barbara Hughes Moore

A. FACTUAL SCENARIO FOR MOOT

The Applicant is Maryam Begum, parent of Amara Begum who is a 15-year-old child who has suffered a fatal car accident involving a catastrophic brain injury and is now in a permanently vegetative stage and irreversible coma. The accident occurred on Monday 5th May 2023. Amara has her 16th Birthday on Saturday 10th May 2023.

Doctors at the hospital have confirmed that Amara’s heart and respiratory systems have stopped working, although they cannot confirm that her brain stem has stopped working. Doctors have confirmed that all life-prolonging measures are now exhausted or foregone, there is no alternative left but to proceed to death determination. Both the doctors and the parents are in agreement that it is in the best interests of Amara to be taken off the ventilator and allowed to pass-away.

New Legislation has recently been passed by the Welsh Parliament, which extends opt-out consent to children who are aged 16 and 17. At 18 years old a child becomes an adult.

It is the hospital’s policy following the passing of presumed consent legislation to continue to keep children on a ventilatory until their organs can be harvested. Ventilation is used to prolong the lives of dying donors by mechanical ventilation of their lungs. This is for the benefit of a potential donor, and not the person donating organs.

Amara did not specifically register a decision about whether she would donate her organs or not prior to her accident. Although, she mentioned to her family members that she thought that she ‘might like to’ donate her organs when she passed away, as they had been learning about it in school.

Amara has type AB negative blood, the rarest of the eight main blood types.

The Applicant and family are members of the Muslim community. Although, organ donation is permitted and supported by Islamic law, many members of the community believe that this should not take place until clinical brain death has been declared as they believe that this is when the ‘spirit’ leaves the body. Maryam shares this belief and wishes to wait for this to happen. Maryam refuses to give consent to the harvesting of Amara’s organs.

Rebecca, a 14-year-old patient at the same hospital as Amara, is on the waiting list for an experimental transplant. She has been completely paralysed since she was 11 after an accident at school. She suffers with pain everyday and requires assistance breathing. Rebecca has type AB negative blood. Doctors at Cardiff Hospital have designed an experimental transplantation procedure to replace part of Rebecca’s spine. Rebecca has been given 4 months to live if she does not have a transplant. Doctors have informed Maryam that Amara is a perfect match for this experimental procedure.

*Maryam does not want Amara to donate part of her spine. She wants Amara to pass away peacefully. Dr Khan representing the Cochrane Hospital wants the donation to proceed.*

B. KEY LEGISLATION

**The Organ Donation (Informed Consent) (Wales) Act 2023**

*Introductory Text*

An Act to make amendments to the Human Transplantation (Wales) Act 2013 concerning organ donation in children and compensation provided during the course of organ transplantation.

*Having been passed by the Welsh Parliament and having received the royal assent of His Majesty, it is enacted as follows:*

**1. Principles**

1. Donation of Organs for Transplantation to be made based on the process of deemed consent;
2. This deemed consent is to apply to Children aged 16 and older who are to be treated in the same way as adults;
3. Organ donation may take place in the event of circulatory death (i.e., no need to wait for brainstem death) and no express consent is needed if there is presumed consent;
4. Presumed consent may extend to situations where the patient has suffered circulatory and/or brainstem death by looking at the intentions of the person while they were living

**3. Deemed Consent to Organ Transplantation**

(1) Section 3 of the Human Transplantation (Wales) Act 2013 is amended as follows.

(a). Amend Section 6(2) to specify that Children aged 16 or older are to be treated in the same way as adults, i.e., through the deemed consent process;

(b) This amendment allows children who are 16 and 17 years old to be treated in the same way as adults under this Act, that is, under the deemed consent process. Therefore, it will be considered that competent children aged 16 and older will become an organ donor when they die unless they have specifically opted out via the organ donor register

**4. Respecting Children’s choices**

(2) Section 6(2A) is inserted to state: “No adult can veto the consent or refusal of a competent child aged 16 or 17 to have their organs harvested. In instances where the patient has suffered cardiac death, the patient’s wishes are to be respected and the transplantation activity will commence”

(3) Amend Section 3 to specify a child over the age of 16 can make an informed consent for organ donation and this can be via direct or indirect means.

C. SUMMARY OF KEY CASES

1. *Gillick v West Norfolk Wisbech AHA* [1985] UKHL 7

Facts

* The Department of Health and Social Security issues advice that children could seek contraceptive advice and treatment without parental consent.
* Mrs Gillick was a mother of five children under the age of 16.
* Mrs Gillick did not want any of her daughters to have advice or treatment without her consent. She applied for a declaration that her daughters would not be treated without her specific consent.

Issues

1. Whether a child has capacity to consent to treatment
2. The level of understanding necessary for a child to consent to treatment

Judgement

1. The judges were in agreement that a child can consent to treatment without needing the permission of their parents.
2. The judges were split on the level of understanding needed for the child to be considered competent to consent:

Lord Fraser

“[…] whether or not a child is capable of giving the necessary consent will depend on the child’s maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can properly and fairly be described as true consent”

* Lord Fraser preferred a lower level of understanding to consent to treatment. A child must therefore understand the ‘nature’ of the decision that is decision being made. This means that a child must understand:
  1. What is going to be done to them, or happen to them;
  2. Understand the major risks or consequences of the procedure;
  3. Understand the major benefits of the procedure; and
  4. Understand the alternatives
* A child must also be able to retain, weigh up and communicate a decision
* If a child can do all this, they are considered Gillick competent

Lord Scarman

* Lord Scarman disagreed and stated that a child needed to have a higher level of understanding to consent to treatment

“It is not enough that she should understand the nature of the advice which is being given: she must also have sufficient maturity to understand what is involved. There are moral and family questions, especially her relationship with her parents; long-term problems associated with the emotional impact of pregnancy and its termination; and there are risks to health of sexual intercourse at her age, risks which contraception will diminish but not eliminate.”

* Lord Scarman argued that a child had to understand:

1. What is going to be done to them in detail
2. All the risks
3. All the benefits
4. All the options and alternatives
5. The emotional and mental impact of the decision
6. The effect that a decision will have on their family and friends.

* A child can be Gillick competent at any age

“[…] a minor’s capacity to make his or her own decisions depends upon the minor having sufficient understanding and intelligence to make the decision and is not to be determined by reference to any judicial fixed age limit.”

2. *Re W (A Minor) (Medical Treatment: Courts Jurisdiction)* [1993] Fam 64

Facts

* A girl of 16 suffered from anorexia nervosa
* She was admitted into an in-patient unit
* Doctors decided that she needed to be given medical treatment to feed her

Relevant Law

* Section 8(1) of the Family Law Reform Act states that:

“(1) The consent of a minor who has attained the age of 16 years […] shall be effective as if they were full age; and where a minor by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian.”

Issue

* Whether the child could refuse treatment if their parents consented

Judgement

* Lord Donaldson stated that a child of 16 or 17 was presumed to be Gillick competent and could consent to medical treatment.
* The child had to understand to the standard adopted by Lord Scarman.
* However, a child who was 16 or 17 could not refuse treatment.
* In a previous case of Re R (A Minor), Lord Donaldson said:

“Consent […] is merely a key which unlocks a door. Furthermore, whilst in the case of an adult of full capacity there will usually only be one keyholder, namely the patient, in the ordinary family unit where a young child is the patient there will be two keyholders, namely the parents, with a several as well as a joint right to turn the key and unlock the door.”

* A child has no right to refuse treatment
* A parent or the Court could therefore consent of behalf of the child if they thought it was in their best interests.
* If the parents refuse and the Court agrees, the consent of the court can be used.

“I now prefer the analogy of the legal “flak jacket” which protects the doctor from claims by the litigious whether he acquires it from his patient who may be a minor over the age of 16, or a “Gillick competent” child under the age or from another person having parental responsibilities which include a right to consent to treatment of the minor. Anyone who gives a him a flak jacket (this is, consent) may take it back, but the doctor only needs one for so long as he continues to have one he has the legal right to proceed.”

3. *Bell v Tavistock and Portman NHS Foundation Trust* [2021] EWCA Civ 1363

Facts

* The case related to two children who had received puberty blockers from the NHS
* The children argued that the puberty blockers were an ‘experimental’ treatment
* Because the treatment was ‘experimental’ they could not have Gillick competence to consent to treatment
* This was because no child could properly understand the consequences of the treatment.

Issues

1. The issue was whether children could understand ‘experimental’ treatment
2. Whether assumptions could be made about Gillick competence in relation to age OR whether each child had be assessed individually.

Judgement

1. A child can consent to experimental treatment as long as the doctor thinks it is in the individual child’s best interests.

* To be competent to consent to experimental treatment, however, they must appreciate the enhanced risks due to the lack of knowledge and research about that treatment

“[93] […] clinicians must satisfy themselves that the child and parents appreciate the short and long-term implications of treatment upon which the child is embarking. […] It is for the clinicians to exercise their judgement knowing how important it is that consent is properly obtained according to the particular individual circumstances […] and by reference to developing understanding this difficult and controversial area.”

2. What information the patient needs to understand is dependent on the specific decision being made. Each child needs to be assessed on their own ability to understand rather than stopped because of their age

“[81] […] whether valid consent is given in any case is a question of fact. That depends upon the individual circumstances of any child and the surrounding circumstances of the clinical issue. Both [Lord Scarman] and Lord Fraser identified at a high level what they could expect a clinician to take into account in making a decision.”

* Whether a child is competent is for the doctor to decide.

“[85] […] In our judgement, however, the court was not in a position to generalise about the capability of persons of different ages to understand what is necessary for them to be competent to consent to the administration of puberty blockers.”

D. WITNESS STATEMENTS

1. Applicant’s Witness Statement

Statement of the Applicant

Maryam Begum

Statement Number 1

Dated 08/06/2023

Case:HC24001

IN THE HIGH COURTS OF JUSTICE

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN ACT 1989

BETWEEN

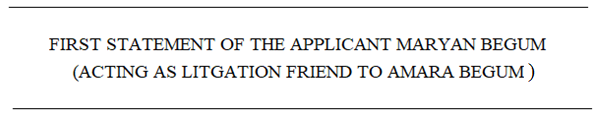
MARYAM BEGUM

Applicant

-and-

COCHRANE HOSPITAL

Respondent



1. I, Mrs. Maryam Begum am the Claimant in this claim, acting as litigation friend on behalf of my daughter Amara Begum. The facts in this statement come from my personal knowledge.
2. My daughter Amara Begum is 15 years old. She is a very happy child, who enjoys nothing more than going out and playing with her friends. She is a well-behaved Muslim girl who often attends Mosque and helps me at community events. Amara attends Tom Jones High School as a student. She is popular with both the students and teachers and is very good at Science, particularly biology. She understands information about chemicals and plants, and often talks about them to me when she comes home from school. She wanted more than anything to become a doctor, and help people.
3. Every day, I drive myself and my daughter to Fitzalan High School. I work in the school kitchen preparing lunches for the students. Usually, I wake up at 7.30am. I then prepare Amara’s breakfast and get ready for work. I then wake Amara up she gets ready and She comes downstairs for breakfast. We are Muslim and pray before I drive her to school.
4. I usually set off to work, with Amara as a passenger at 8.30am. The drive takes about 20 minutes. There is usually heavy traffic as you come towards the school on Dylan Street, due to other parents parking to drop off their children. Also, many children cross the street without looking. I make sure to take extra precautions by driving very slowly down Dylan Street.
5. On Monday 5th June, at around 8.45am, I was driving Amara to school. A child ran right out in front of me and into the road. I attempted to emergency brake and swerve to avoid them. However, this led me to colliding into an oncoming car.
6. I do not remember much after the accident. I have been told that both Amara and I were rushed to Cochrane Hospital in Cardiff.
7. When I regained consciousness, around 2.00pm, I was told by the nurse that the impact of the oncoming car had been on the passenger side where Amara was sitting. She had suffered several broken bones, internal bleeding, and was in surgery to relieve pressure on her brain. I was distraught by this news. I immediately went to the neurological surgical unit to be with Amara.
8. Amara left surgery at around 4.00pm that afternoon. Amara was transferred to intensive care. Amara looked terrible, her face and head were swollen and bruised. I sat next to her and held her hand, and prayed.
9. At around 5pm I was visited by Dr Khan who was a consultant neurologist at the hospital. He informed me that the operation to release pressure on her brain had been successful. However, the impact had been very bad. He did not know whether she would wake up. If she did wake up it was very likely that she would be brain damaged and suffer with disabilities all her life.
10. After hearing this news, I sat by Amara’s bed all day and night praying to Allah that she would be ok. I would stroke her hand and talking to her about her friends, and about her favorite subject Biology.
11. On Wednesday 7th of June, in the afternoon, around 2.00pm, Dr Khan came to see me. I asked him how Amara was doing. He said that at this point it was highly unlikely that Amara would wake up. He said that although he had not conducted any tests it was likely she was brain dead. If the ventilator was removed Amara would pass away very quickly. He said that at this point it would be in her best interests to pass away peacefully. I was terribly upset and cried by Amara’s side but knew that the doctor was right. I did not want Amara to suffer any more.
12. At 4.00pm Dr Khan came back with a nurse; I do not remember her name. All I know is that she was a called a SNOD. Dr Khan told me that it would soon be time to take Amara off the ventilator but before they did that, he asked whether I would consider donating her organs. He told me that the law now allows doctors to take children’s organs without the permission of their parents, but he felt that it was better to sit down and ask the parents for their view.
13. Dr Khan asked me whether Amara and I had ever discussed donating organs. I told him that Amara had been learning about health law and ethics in school. She had come home after a class and said that she might want to donate her organs. I told her that this was against our beliefs as Muslims. I told her that I did not want her to donate her organs and she was too young to make a decision. She was upset with this, and said that she still might sign the organ donation register anyway. We argued and she went to her room. We did not discuss this again until some weeks later
14. Some weeks later, we spoke again, and she said that she had now changed her mind, and would not donate her organs upon death. Although, she said that she still wanted to help people who needed transplants. She said that she could still donate one kidney, part of her liver, bone marrow and blood, and would do so, if she got the chance. Amara said that she could do this in accordance with Islam, as these donations can occur when she is alive. I said that this was very risky. She said that she had looked up some of the risks, and was happy to take the risk if it would help others.
15. Dr Khan told me that several of Amara’s organs were injured so she would not be able to donate these. However, she would be able to donate part of her spine. He said that he was part of a team that was undertaking experimental research into donation of parts of the spine. He informed me that it was highly unusual to donate a spine.
16. Dr Khan informed me that he thought Amara would have wanted to donate her organs upon death. He said that this was indicated, as she wanted to help people. He said that he would therefore start preparing Amara’s body for the experimental surgery. He would do this when she was still alive. He said that whilst this preparation was no longer in her best interest, it would make sure that her spine was in the best possible condition to donate.
17. I told Dr Khan that I did not want the preparation or the donation. I was convinced after the second conversation with Amara, that she would not want it due to her beliefs. She would never had known about an experimental procedure, and could not have agreed to it.
18. Dr Khan begged me to reconsider. He told me about a girl named Rebecca who he was looking after. He said that she was paralyzed and would die without this operation. I was angry and upset by being told this. He seemed to insinuate that my decision would lead to Rebecca’s death. I feel very sorry for Rebecca, but told him again I did not want to go through with the operation.
19. I believe that the facts stated in this witness statement are true.

Signed: Maryam Begum Dated: 8th June 2023

2. Respondents Witness Statement

Statement of the Respondent

Dr Amir Khan

Statement Number 1

Dated 08/06/2023

Case:HC24001

IN THE HIGH COURTS OF JUSTICE

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN ACT 1989

BETWEEN

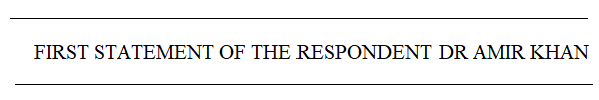
MARYAM BEGUM

Applicant

-and-

COCHRANE HOSPITAL

Respondent



1. I, Dr Amir Khan, am a consultant neurologist at Cochrane Hospital. I specialise in pediatric neurology. Additionally, I have specialist training on preparation of individuals for transplantation. I have been working in this role for 20 years. As Amara Begum’s treating doctor, I am acting as a representative of the Cochrane Hospital.
2. Beyond my clinical duties, I also work as part of a clinical research team which specializes in novel organ donation for children. My specific expertise is in donation of nerves and parts of the spine, as a way to treat paralysis.
3. Recently the Welsh Parliament brought in legislation which allows doctors to presume the consent of children who have reached the age of 16 and 17 years of age. This allows the preparation of children, and harvesting of organs without their specific consent. This is in line with the Human Transplantation (Wales) Act 2013, which brought deemed consent into force in Wales for adults in 2015.
4. It is the policy of the hospital to take the organs of 16 and 17 year old as they have presumed to have consented, even if they have not signed the organ donation register. Since the passing of the Act, it has been the policy of the hospital to keep all children, on ventilator support until a decision has been made about organ donation by the treating doctor.
5. Additionally, it is the view of the trust that Principle 4 also extends the ability to ‘imply consent’ for those patient’s under the age of 16 years of age. This is because the Principle is not specific about the age of ‘Patients.’ Consent can be implied if the child has demonstrated an ‘intention’ to donate whilst they were living. Additionally, that the child whilst living was Gillick competent i.e. that they had the capacity to understand the nature of organ donation.
6. Since the passing of the Organ Donation (Informed Consent)(Wales) Bill 2023, I have harvested the organs of 10 children under the age of 16, where there has been evidence that there has been ‘implied’ consent. In these cases, all of the parents were in agreement that donation should take place.
7. In usual practice, I inform the parents that the organs of children will be harvested. I view that this is a good ethical practice, but not a legal requirement. I seldom allow parents to veto either a positive consent or a presumed consent. I have only once allowed a parent to veto a presumed consent of a 17 year. In this case the child had created a written refusal which was evidenced by the parents, witnessed and signed by them.
8. On 5th June at around 9.45am, I was working on call at the A&E department of Health Hospital. We a call that two ambulances were on their way from a care crash. The first contained Mrs. Marayam Begum and second was Amara Begum.
9. Mrs. Begum was unconscious on arrival. She had a concussion from the impact. She also had several cuts and two broken fingers. She was treated and sent to the ward for observation until she regained consciousness.
10. At 10.30am the second ambulance arrived with Amara, she was in a much more serious condition. She was also unconscious on arrival, had a large cut on her head, and had severe bruising to the head and face. She also had several broken bones, and injuries to her internal organs. She was rushed for a CT scan which found that she had swelling and bleeding on the brain. She was taken for urgent brain surgery. The bleeding was stopped, and part of her skull was removed to relive pressure. However, the prognosis was not good, it was likely that she had suffered severe brain damage. Amara was placed on a ventilator, however it was doubtful that Amara would regain consciousness.
11. At 2.00pm, whilst operating, I was told that Mrs. Begum was awake, and wanted to see Amara. Surgery finished at 3.30pm, and Amara was transferred to Intensive Care, where I allowed her mother to visit. At 5.00pm, I talked to Mrs. Begum and told her the poor prognosis. At this point I usually talk about the option of organ donation. Talking about organ donation early, allows time for the families to think about their options. However, as Mrs. Begum had just been in a car accident, and she was very upset, I thought it best not to raise the option at this time.
12. I continued to monitor Amara over the following days. As predicated Amara did not regain consciousness.
13. On Wednesday 7th June I informed Mrs. Begum, that it was now extremely unlikely that Amara would regain consciousness. She had suffered severe brain damage, and if she did wake up she would suffer significant disabilities and need full time care for the rest of her life. Whilst brain stem death could not be confirmed due the nature of Amara’s injuries, it would therefore be best to turn off the ventilator. Mrs. Begum agreed that it would be best to let Amara pass away peacefully.
14. It was at this point that I told Mrs. Begum about the opportunity of donation. Amara’s primary organs were damaged and could not be donated, however, she could donate other organs and tissues. I particularly emphasised the chance of donating Amara’s lower spine. This would be used as part of a novel procedure that would allow another child to use their legs again. I informed Mrs. Begum that I could do this without the permission of the parents for those over 16, but as Amara was 15, I needed to know whether she would want to donate her organs.
15. Mrs. Begum informed me that on several occasions Amara had indicated a willingness to donate. Although, the family had pushed back on this wish, Amara had persevered as she wanted to help people and informed Mrs. Begum of this intention some weeks later (after their initial conversation). Mrs. Begum also told me that Amara was fully informed about the nature of organ donation and the law, from lessons that she had had in school. It was clear from the description Mrs. Begum, that Amara had thought about this deeply over a prolonged period of time, and come to a careful decision that attempted to balance the religious wishes of her parents, and her own wish to help people. On this basis, I was of the opinion that Amara was Gillick competent, and I could rely on the ‘implied’ nature of her consent.
16. When I informed Mrs. Begum of this, she said that she was not happy and wanted to veto. I told her that there was no opportunity to veto in the law, unless there was written evidence that Amara did not want the donation to proceed.
17. Mrs. Begum said that Amara was a Muslim, and that this was against her religion. I drew attention to the recent fatwa issued by the Muslim Law Council UK, which states:

“If anyone saves a life, it is at if he saves the lives of all humankind.” (Qua’ran 5:32-34)

I told her that it the Council are happy for the donation of organs to proceed after the heart had stopped.

1. Mrs. Begum was still reluctant. Sometimes when families are hesitant it is useful to informed them of personal stories of children who have, or would benefit from donation. As such, I told her that Rebecca, a 14-year-old patient at the same hospital as Amara. Rebecca is on the waiting list for an experimental spinal transplant. She has been completely paralysed since she was 11 after an accident at school. She suffers with pain everyday and requires assistance breathing. Rebecca has type AB negative blood, which makes matching for organs extremely rare. Doctors at Cardiff Hospital have designed an experimental transplantation procedure to replace part of Rebecca’s spine, which could be done with Amara’s spine. Rebecca has been given 4 months to live if she does not have a transplant and Amara is a perfect match for this experimental procedure.
2. Mrs. Begum became angry at this information and said that I was trying to emotionally blackmail her. Due to this accusation, I ended the conversation. I gave Mrs Begum a few more days to come around to the idea of donation. More time usually helps families come to term with the death of loved ones. However, yesterday afternoon, I received notice of this emergency application.
3. I believe that the facts stated in this witness statement are true.

Signed: Dr Amir Khan Dated: 8th June 2023

E. INSTRUCTIONS FROM THE CLIENT

1. Instructions to Lawyers for Maryam:

* Maryam does not want Amara to donate .
* Amara did indicate when she was alive that she might be willing to donate her organs after learning about it in school .
* Amara never signed the organ donation register. She was not specific about what organs she wanted to donate, and never considered experimental donation.
* Amara would not understand the information needed to give consent to this form of experimental donation – she would therefore not have been *Gillick* competence.
* Amara was a Muslim, and would not want to donate her organs before brain death.
* It is in Amara’s best interests to be taken off the ventilator and to pass away peacefully.

2. Instructions to Lawyers for Cochrane Hospital:

* Dr Khan representing the Hospital wants the donation to occur.
* He has been researching experimental spinal donation for the last 30 years and is 99% sure that such a transplantation would succeed.
* Dr Khan believes based on conversations with Maryam that Amara would have consented to the transplantation, therefore her consent can be ‘implied’ according to Principle (4) of the Organ Donation (Informed Consent) Act 2023.
* Dr Khan argues that Amara was *Gillick* competent and would have known all the important information necessary for transplantation as she learned about organ donation in school.
* Dr Khan believes that organ donation would not be in opposition to Amara’s Muslim beliefs as the Quran states that “If anyone saves a life, it is as if he saves the lives of all humankind.”[[1]](#footnote-1) In 1995 the Muslim Law (Sharia) Council UK issued a fatwa, saying organ donation is permitted after the heart has stopped.
* Alternatively, Dr Khan instructs that the lawyer argue that as Amara is almost 16 it is in her best interests to turn her ventilator off on Saturday – that was her consent could be presumed under the new law.

**After a preliminary hearing, the following order was made giving direction for an combined fact-finding and final hearing:**

1. **Witness statements would stand in chief for both parties. Both parties will have an opportunity to cross-examine, Mrs Begum and Dr Khan respectively.**
2. **As this is an emergency hearing, expert evidence will not be needed.**
3. **Both parties have agreed the relevant case-law relied upon, which the should refer to during their legal arguments during the hearing.**
4. **Skeleton arguments addressing legal issues will be submitted to the Court by 12.00 noon on the day of the hearing.**

F. DRAFT SKELETON ARGUMENT

Case:HC24001

IN THE HIGH COURTS OF JUSTICE

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN ACT 1989

BETWEEN

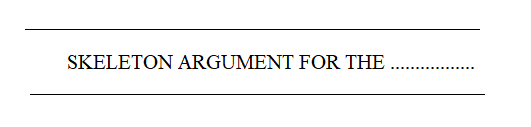
MARYAM BEGUM

Applicant

-and-

COCHRANE HOSPITAL

Respondent



I. INTRODUCTION

1. The Applicant is Maryam Begum, parent of Amara Begum who is a 15-year-old child who has suffered a fatal car accident involving a catastrophic brain injury and is now in a permanently vegetative stage and irreversible coma.
2. The accident occurred on Monday 5th May 2023. Amara has her 16th Birthday on Saturday 10th May 2023.
3. Doctors at the hospital have confirmed that Amara’s heart and respiratory systems have stopped working, although they cannot confirm that her brain stem has stopped working.
4. Doctors have confirmed that all life-prolonging measures are now exhausted or foregone, there is no alternative left but to proceed to death determination. Both the doctors and the parents are in agreement that it is in the best interests of Amara to be taken off the ventilator and allowed to pass-away.

II. THE KEY ISSUE(S)

1. The primary issue is whether Amara’s Organ’s should be harvested. Both the appropriate interpretation of the law, and the key facts are in dispute

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III. KEY FACTS IN DISPUTE

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IV. THE LAW IN DISPUTE

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V.SUBMISSIONS TO BE MADE AT TRIAL

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VI. CONCLUSION

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1. *Qua’ran* 5:32-34 [↑](#footnote-ref-1)