

Answers to practical exercises

Chapter 11: Legal Reasoning

Page 253: Gillick

1. What was the outcome?

By a majority, the House of Lords judgement was that a child under the age of 16 could in law have the capacity to consent.

2. What were the arguments put forward by the majority?

- .. a minor's capacity to make his or her own decision depends on the minor having sufficient understanding and intelligence to make the decision and is not to be determined by reference to any judicially fixed age limit (Lord Scarman)
- ...as a matter of law the parental right to determine whether or not the minor child below the age of 16 will have medical treatment terminates if and when the child achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed (Lord Scarman)
- ... it seems to me verging on the absurd that a girl or boy aged 15 could not effectively consent, for example, to have a medical examination of some trivial injury to his body or even to have his broken arm set (Lord Fraser)
- Provided the patient, whether a boy or a girl, is capable of understanding what is proposed, and of expressing his or her own wishes, I see no good reason for holding that he or she lacks capacity to express them validly and effectively... (Lord Fraser)
- In circumstances where it is apparent that the criminal sanction will not, or is unlikely to, afford the necessary protection, it cannot, in my opinion, be contrary to public policy to prescribe contraception as the only effective means of avoiding a wholly undesirable pregnancy (Lord Bridge)

3. What did the dissenting judgments say?

- If a man has sexual intercourse with a girl under 16 without her consent, the crime which he thereby commits is that of rape. The right way to put the matter is that 16 is the age of a girl below which a man cannot lawfully have sexual intercourse with her. It was open to Parliament in 1956, when the Sexual Offences Act of that year was passed, and it has remained open to Parliament throughout the 29 years which have since elapsed, to pass legislation providing for some lower age than 16, if it thought fit to do so. Parliament has not thought fit to do so, and I do not consider that it would be right for your Lordships' House, by holding that girls under 16 can lawfully be provided with contraceptive facilities, to undermine or circumvent the criminal law which Parliament has enacted (Lord Brandon)
- In my view the law is consistent with social policy in forbidding the provision of contraceptive facilities for young girls who are under the care and protection of a parent without the involvement of the parent (Lord Templeman)