

LEGAL STUDIES

Oral Research Task – Family

In each family, there is a story to be uncovered. A story that embodies hope and despair, but more importantly truth.

The role of the family court of Australia is to hear cases in relation to family matters. It has jurisdiction over disputes ranging from marriage settlements, separation and divorce to child custody. **A comprehensive list of areas that the Family court deals with is included in this handout.**

Children, parents and other associated parties are all affected by the decisions handed down by the Family Court of Australia. **As you can see from this diagram, the Family Court of Australia is part of the Federal Court and deals with cases from every state except Western Australia.** It was established in 1976 and its primary role is to legally settle cases whilst taking into account the complexity of the law, facts and other issues. As a result of the specialised nature of this court another objective of the Family Court of Australia is to concentrate and deal with exclusive areas and issues pertaining to Family law, so that the outcome of each case is fair, just and achieves equality for all parties involved.

In the Department of Health and Community services versus JMB and SMB case of 1992, 14-year-old M was intellectually disabled. Her parents JMB and SMB wanted to undergo the medical procedure of sterilization. In essence her parents sought to sojourn the young girl's ability to become pregnant and menstruate. Their motives for the medical treatment was based on the assumption that the sterilisation would indeed prevent trauma and stress that could result from both pregnancy and menstruation. The Department of Health and Community Services argued that the procedure and outcome of sterilisation was an invasion of M's body despite the fact that she was under the care of her parents. The Department of Health and Community services also argued that the medical procedure was in severe breach of her human rights.

The Court took into account the circumstances and motives of both parties and therefore decided to rule in favour of the Department of Health and Community Services. In this case sterilisation was not in the best interest of 14-year-old M and her parents did not have the authority to make this decision for their child because it did not come within the reasonable bounds of parental discretion in relation to medical treatment.

There are many advantages and disadvantages of the Family Court of Australia. Certain factors such as time, accessibility, knowledge and money impact whether justice is achieved not just for the individual but for society as well.

In the case of the Department of Health and Community Services versus JMB and SMB justice was definitely achieved for the daughter M who was represented by the Department of Health and Community Services. M was extremely lucky to have her case argued by top lawyers hired by the Department. It is important to note that not all individuals have access to prime legal representation because it is extremely expensive, costing thousands of dollars a day to hire a professional barrister. Barristers ultimately are the people who manipulate legislation, witnesses and so forth to prove a case thus the higher the proficiency of these people, the more chance an individual has at succeeding in the case.

The legal system does not provide equality for children and other vulnerable individuals because they cannot access the Family Court, as they possess very little knowledge about the Australia's legal system. As a result the Family Court of Australia cannot achieve fairness for all individuals and

therefore it is only effective in some regards. In order to rectify this issue, the government should consider reforming the legal aid system by having a youth branch that does cases for minors who are not familiar with the law.

Another issue that impedes on the effectiveness of the Family Court is that the proceedings are very complex in nature. With the large influx of migrants coming into Australia, many couples are choosing to stay in a de-facto relationship rather than argue that their marriage should be legally represented in Australia despite cultural interpretations. Factors preventing them from achieving this include language barriers and the cost of hiring legal representation.

Time is another concern directly impacting the effectiveness of the Family Court of Australia. Hundreds of cases are heard every year in this court and as a result most court cases take many months or even years to complete as there are multiple proceedings. Consequently, individual's especially young children involved in divorce and child custody cases may experience prolonged periods of stress, which negatively affects their general well being. Justice cannot be achieved if the cases are delayed by a significant amount of time as children especially certain details that are critical to the case, for example in domestic violence cases.

The Family Court of Australia was effective at achieving justice for society in the Department of Health and Community Services versus JMB and SMB, because the decision handed down by the judge. The decision respected the human rights of M and therefore upheld the values of Australian society.

The Family Court of Australia is effective at achieving justice for society due to the doctrine of precedent, which allows past judicial decisions to become common law. This in turn allows legislation to undergo reform so that it does not become outdated and reflects the current values and beliefs of society.

In conclusion the Family Court of Australia is an integral part of our legal system. Whilst it may have its flaws there can be procedures implemented to rectify these problems. Call it a clan, call it a network, call it a tribe, call it a family. Whatever you call it, whoever you are, you need one and this specialized court does its best to achieve justice, fairness and equality for many Australians.