

SEMINAR FOUR: MURDER

Essential reading for this seminar

Nicola Monaghan, *Criminal Law Directions* (6th ed, OUP 2022) ch5 or

John Child and David Ormerod, *Essentials of Criminal Law* (4th ed, OUP 2021) ch5

Re A (conjoined twins) [2000] HRLR 721

Facts

The parents of conjoined twins, M and J, appealed against a decision to allow an operation to surgically separate them which would result in the death of M. M had severe brain abnormalities, no lungs and was supplied with blood by her sister. J however was normally functioning in all relevant respects. At first instance the judge held that allowing the operation would be in the best interests of both children on the basis that it would allow J a relatively normal life and would prevent further suffering to M as J grew. It was held, on the basis of [*Airedale NHS Trust v Bland* \[1993\] AC 789](#), that the death of M could be justified by analogy to a doctor removing life sustaining treatment from a patient with no hope of recovery.

Issues

The parents appealed on the basis that the judge had erred in finding that the operation was in the best interests of both children. The Court of Appeal was asked to consider whether this was the case, but addressed both this and the result of liability should the operation proceed (whether necessity would provide a defence).

Decision / Outcome

It was held that

(1) whilst the views of the parents should be given significant respect, the court must address the matter purely on the welfare of the children.

(2) In this respect, the trial judge had erred in suggesting that the separation would be of benefit to both children because all life had equal value. M's life was as valuable as J's in these circumstances and the operation could not therefore, be in her best interest.

(3) The court was then required to balance the interests of the children against one another and concluded that the balance fell in favour of J.

(4) The operation would not constitute murder because the three elements required to raise a defence of necessity were present:

-(a) the act was required to avoid an irreparable evil;

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RJ Shavelson



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