

Lowe & White

Wards of Court

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Foreword

by Sir George Baker, PC, DBE,
President of the Family Division

The origins of wardship are shrouded in the mists of the Middle Ages and in the feudal system. There was a Court of Wards in 1540. There was an ancient process long extinct by writ of ravishment of wards—of the estate not the person. There was a Court of Orphans in the City of London. In 1827 Lord Chancellor Eldon in *Wellesley v The Duke of Beaufort* 2 Russell 1 referred to doubts about the origin of the jurisdiction but he had no doubt that the Court of Chancery ('His Majesty's Court') had acknowledged and enforced the duties of the father 'for centuries past'. It is consequently surprising that *Simpson on Infants*, of which the 3rd Edition was in 1908 and the 4th and last in 1926 was the only book of reference, although recently some standard text books have included a chapter on wardship. But now that the days have gone when the Chancery Judge could have all his wards to tea annually, and Family Division Judges in London alone are hearing 800-900 wardship summonses each year, many of which raise highly complex questions of law and fact and cover children and parents of every nationality and creed, a comprehensive book on wardship will be a blessing to everyone, be he or she judge, practitioner, academic lawyer, student, social worker or just interested in children.

It is a happy coincidence that Messrs Lowe and White's book, which I am sure will become a standard work, is being published in 1979, which the General Assembly of the United Nations has decreed as the International Year of the Child. Having watched it take shape from Mr Lowe's initial lecture in Toronto and having urged him to publish, I now commend it enthusiastically, not only for its wealth of information, but as a very readable book coming at the time when those concerned with family law ought to pause to ask where we are going, and to heed the warning bells in Chapter XIII. It has also the inestimable advantage that the authors have seen what actually happens in the courts, and have talked to the Official Solicitor, the Tipstaff and others about their work.

Finally I cannot resist quoting the accolade by a young man who had recently passed his Bar examinations when he

read the proofs: 'If only I had seen all this before my papers in Family Law, how much time I would have saved, how much better I should have done and how much more exciting the subject would have been'.

George Baker

11 January 1979

Preface

In 1967 Mr Justice Cross (as he then was) wrote that wardship was a subject of 'general interest upon which there was little or nothing in print'. Although there have been articles since then there has been no comprehensive treatment of wardship. In 1976, therefore, we set out to remedy this omission.

The current popularity of wardship is an indication of the increasing awareness of the wide ranging benefits of the jurisdiction. It has been our aim to provide a work to which the practitioner may readily refer to assist him in attaining these benefits. At the same time we have also tried to place wardship in its context within the legal system relating to the welfare of children. Particular attention has therefore been paid to its relationship with other jurisdictions such as custody, custodianship and adoption and to local authorities' powers.

Recent trends indicate that the jurisdiction is being increasingly used to review decisions already made by other courts or bodies. We are concerned that continued expansion might not only overload the wardship jurisdiction itself but might also undermine the rest of the child welfare system. Although the exercise of the wardship power can be justified on the basis of the paramountcy of the ward's welfare the extent to which such a principle should be applied is questionable. It may be that the current increase in the conflict between wardship and other jurisdictions will be seen as detrimental to the interests of children generally. If so, some limitation of the principle that the welfare of the ward is paramount should be considered.

The book has been written on the basis that the Domestic Proceedings and Magistrates' Courts Act 1978 is in force but that the custodianship provisions in the Children Act 1975, as amended by the 1978 Act, are not in force. At the time of writing the 1978 Act is expected to be implemented late in 1979 and the custodianship provisions early in 1980. In general the law stated is that up to August 1978.

Since the completion of the text two points have arisen which are worthy of mention. First, there is a Legal Aid Bill

which will empower the Lord Chancellor to prescribe maximum contributions payable by those receiving legal advice and assistance (including assistance by way of representation) and to prescribe different maxima for different cases or classes of cases. It is to be hoped that the discretion will be exercised in children cases.

Secondly in a case involving the London Borough of Lewisham the House of Lords has been considering the effects of section 1(3) of the Children Act 1948. The decision has now overruled *John v Jones* partly on the lines that we argued in our discussion of local authority powers under the 1948 Act and has obviated many of the difficulties referred to there.

We would like to take this opportunity to thank the many people who have answered our questions and helped us in various ways. We are particularly indebted to the Right Hon Sir George Baker OBE, Mr Norman Turner, the Official Solicitor, Mrs Registrar Butler-Sloss and to Mr R Tolson, the Senior Court Welfare Officer. We would also like to thank Mr Justice Stephen Brown, Mrs Justice Booth, Mr Registrar Turner, Mr Dorling, the Tipstaff, Mr Registrar Parmiter of Bristol, Messrs G Sullivan and J Rogers, Clerks to Bristol Magistrates, Sir John Donne, solicitor, Mrs Christine Betts, barrister with Berkshire County Council and Mr William Evans, solicitor with Avon County Council. We would also wish to record our thanks to our colleagues and in particular to Mrs Margaret Adcock, Assistant Director of the Association of British Adoption and Fostering Agencies and to Messrs Andrew Borkowski, David Clarke and David Feldman, Lecturers in the Faculty of Law, University of Bristol. We would further wish to acknowledge the invaluable typing services we received both in Bristol and London and to Mrs Jenny Dugdale who helped us in the later stages. Finally, but certainly not least we wish to thank Brenda and Alexandra who, during the preparation of the book, had become a "one parent family".

N V Lowe
R A H White
12 March 1979

Table of Statutes

References in this Table to '*Statutes*' are to Halsbury's Statutes of England (Third Edition) showing the volume and page at which the annotated text of the Act will be found.

	PAGE
Administration of Justice Act 1960 (7 <i>Statutes</i> 718)—	
s. 11 (1)	149
12	77, 137, 145, 146, 149, 150, 186
(1)	145, 146
(3), (4)	146
13	162
(2)	162
Administration of Justice Act 1970 (40 <i>Statutes</i> 1098)	10
s. 1	216
(2)	10, 44
Sch. 1	10, 44, 216
Adoption Act 1958 (17 <i>Statutes</i> 635)—	
s. 8	259
(2)	261
35	262
(5A)	259
36 (1), (2)	262
52	257
57	240, 241
(1)	207
British Nationality Act 1948 (1 <i>Statutes</i> 861)	14
Children Act 1948 (17 <i>Statutes</i> 538)	42, 80, 89, 90, 167, 178, 267, 272, 280, 293, 307, 358, 372
s. 1	56, 80, 88, 89, 90, 118, 271, 274, 275, 278, 279, 280, 281, 285, 289, 299, 301, 309, 313, 315, 316, 317, 319
(1)	272, 278
(2)	273

	PAGE
Children Act 1948— <i>continued</i>	
s. 1 (3)	273, 276, 277, 278, 279, 313, 315, 317, 319
(3A)	281
2	90, 262, 273, 274, 276, 278, 281, 295, 300, 301, 307, 308, 310, 311, 313, 314, 319, 372
(1)	248, 273, 274, 280
(4), (5)	274
(6)	278
(11)	248, 275, 307, 308
3 (7)	308
(8)	281
4	289
(3)	296
4A	282, 372
12	80, 90, 268, 280, 297, 300, 307, 309, 318
(1)	38, 297
13	90, 280, 307, 309
(2)	91, 310, 312
14	90, 307, 309
15, 16	280, 307
17	90, 280, 306, 307
59	313, 319
Children Act 1958 (17 <i>Statutes</i> 618)	267
Children Act 1975 (45 <i>Statutes</i> 669)	46, 47, 87, 127, 181, 229, 231, 237, 244, 250, 267, 270, 298, 356
s. 2	248
3	253, 263
8 (1), (3)	252
9	20
12	253, 260, 263, 271

	PAGE		PAGE
Children Act 1975— <i>continued</i>		Children Act 1975— <i>continued</i>	
s. 13	276	s. 100	243
14	275	107	240, 241, 243
17	88, 259	(1)	264
(1)	259	108	283, 298, 306
19 (1)	260	Sch. 1, Pt. II	252
25	275	Sch. 3	207, 231, 239, 264, 283, 298, 308, 373, 374
31	259	Sch 4, Pt. I	257
33	261	Children and Young Persons	
(3)	241, 247	Act 1933 (17 <i>Statutes</i> 433)	267, 269
(4)	240, 241	Sch. 1	283
(5)	240	Children and Young Persons	
(6)	241	Act 1963 (17 <i>Statutes</i> 699)	267, 269
(9)	243	s. 1	268
34 (1)	239, 240, 245, 250	(1)	244
(3)	240	Children and Young Persons	
(4)	88, 250	Act 1969 (40 <i>Statutes</i> 843)	62, 178, 226, 267, 272, 287, 301, 302, 307, 322, 358, 372, 376
(5)	243, 245	s. 1	269, 280, 282, 285, 326
(6)	244	(2)	13, 283, 284, 285, 289, 372, 373
34A	240	(3)	284, 372
35	240	(5)	13, 284
(2)	240	2 (1)	289
36 (1)–(3)	240	(8)	283
37	261	(9)	285
(1)	238, 242	(10)	284
(2)	242	(12)	286
(3)	242, 374	21 (2)	289, 298, 302, 304, 306, 314, 373
(4A)	242	(2A)	306, 373
39	243	(3)	289
40	243	(5)	286
(1), (2)	243	24 (1)	284
(3)	242, 243, 248	(3)	276, 284, 308
41 (1)–(3)	242	27 (4), (5)	298
43A	245, 249	28 (1), (6)	284
44 (1), (2)	238	32A, 32B	286
45	239	70 (1)	283
56	281	(2)	286, 314
57	248, 268, 273, 307	Civil Evidence Act 1968 (12	
58	178, 282, 372	<i>Statutes</i> 910)	289, 374
59	90, 268, 270	s. 1, 2	61, 63
64	178, 286	4	62, 63
65	286		
85	127		
(1)	248		
86	6, 127, 129, 207, 238, 249		
87	6		
(1)	246		
(3)	247		
95	241		

	PAGE
Commonwealth Immigrants Act 1962 (4 <i>Statutes</i> 24) . . .	22
Consular Relations Act 1968 (6 <i>Statutes</i> 1025)	22
Court of Chancery (1738)	164
Court of wards (1540)	2
Courts Act 1971	10, 165
Criminal Justice Act 1967 (8 <i>Statutes</i> 583)—	
s. 9	374
Crown Proceedings Act 1947 (8 <i>Statutes</i> 844)	41
Diplomatic Privileges Act 1708	20
Diplomatic Privileges Act 1964 (6 <i>Statutes</i> 1013)	20
s. 2 (1)	20
Sch. 1	20, 22
Domestic Proceedings and Magistrates' Courts Act 1978 (48 <i>Statutes</i> 730, 818)	7,
86, 201, 206, 207, 213, 217, 220, 231, 243, 250, 359, 376	
s. 2, 6, 7	242
8	206
(2)	250
(3)	231, 242
(4)	86, 207
10	88
14	96
(1), (6)	250
25	98
33	220
34	210, 220, 356, 371
36	186, 360
(1)	123, 126, 127, 228, 314
37	86, 207, 210
39	210, 220, 356, 371
40	96, 250
41 (3), (4)	233
43	266
64	96, 239, 243, 244, 245, 250
65, 69	240
70	245, 249, 356, 371
78	220
88 (1)	101, 206, 213

	PAGE
Domestic Violence and Matrimonial Proceedings Act 1976 (46 <i>Statutes</i> 713)	123
Domicile and Matrimonial Proceedings Act 1973 (43 <i>Statutes</i> 620)—	
s. 5	212
Education Act 1944 (11 <i>Statutes</i> 153)	105, 283
Family Law Reform Act 1969 (17 <i>Statutes</i> 792; 40 <i>Statutes</i> 614)	97
s. 1	12, 65, 107, 139, 203, 356
6	38, 97, 101
(2)	97, 99, 265, 266
(3)	98
(4), (5)	98, 99, 266
(6)	100
(7), (8)	101
7	117, 302, 303, 305, 310
(2)	80, 87, 88, 89, 90, 91 92, 93, 266, 309
(3)	89, 309
(4)	92, 93, 94
(5)	89, 91, 94
8	75
(1)	108
21 (3)	75
Sch. 3	65
Guardianship Act 1968 (New Zealand)—	
s. 9 (1)	12
(3)	85
Guardianship Act 1973 (43 <i>Statutes</i> 643)	46, 87, 206, 209, 217, 374, 380,
s. 1 (1)	21, 207
(3), (4)	201
2 (2)	88
Guardianship of Infants Act 1925 (17 <i>Statutes</i> 24)—	
s. 1	5, 123, 124, 129, 130, 131, 132, 135, 320, 336, 363, 376
4 (2)	235

	PAGE		PAGE
Guardianship of Minors Act 1971 (41 <i>Statutes</i> 761) . . .	46, 86, 87, 95, 206, 207, 209, 213, 217, 219, 223, 231, 234, 243, 244, 264, 313, 356, 371, 374, 380, 383, 384, 387	Law Reform (Miscellaneous Provisions) Act 1949— <i>continued</i>	
s. 1 . . .	5, 7, 11, 13, 85, 88, 96, 106, 113, 114, 123, 124, 125, 126, 127, 128, 129, 130, 186, 209, 228, 229, 230, 243, 253, 255, 256, 314, 321, 322, 336, 360 361, 362, 376	s. 9 . . .	6, 9, 66, 71, 234, 293
2	234	(1)	45
3	47, 234, 235	(2)	51, 71, 99
(2)	235, 236	(3)	65, 81
4 (1)–(4)	232	Legal Aid Act 1974 (44 <i>Statutes</i> 1035)—	
(5)	233	s. 7	68
5	47, 234, 235, 236, 237	(5)	68
(2)	234	8 (1)	190
7	233, 235	13	69
9	201, 206, 242, 264, 310, 311	(1), (2)	69
(1)	250	28 (6A)	286
10 (1), (2)	233	Sch. 1	68
11	235	Legal Aid and Advice Act 1949 (25 <i>Statutes</i> 756)	9, 354
(1)	233	Local Authority Social Services Act 1970 (40 <i>Statu-</i> <i>tes</i> 991)	92, 269
11A (1)	207	s. 1, 2	267
12	266	6	94, 267
(2), (3)	266	Local Government Act 1972 (42 <i>Statutes</i> 841)—	
12C	266	s. 195	267
(4), (5)	266	Local Government Act 1974	294
13A	201, 210, 220	Magistrates' Courts Act 1952 (21 <i>Statutes</i> 181)—	
14	206, 264, 310, 311	s. 54(3)	220
(2)	100	Maintenance Orders Act 1950 (17 <i>Statutes</i> 280)—	
14A (1)	250	s. 16	101
(2)	250, 251	Marriage Act 1949 (17 <i>Statutes</i> 44)	276
(9)	250	s. 3	307
15	127	(6)	140, 208
17 (1)	234	(7)	276
20 (2)	127	Sch. 2	307
Immigration Act 1971 (41 <i>Sta-</i> <i>tutes</i> 12)	22	Matrimonial Causes Act 1973 (43 <i>Statutes</i> 539)	86, 163, 170, 171, 210, 213, 231, 266
Law Reform (Miscellaneous Provisions) Act 1949 (17 <i>Statutes</i> 592)	9, 42, 46, 167, 210, 354, 371, 380, 383, 384, 387	s. 27	206, 251
		41	209, 226, 240
		42	41, 166, 167, 206, 251
		(1)	213
		(2)	206, 217

	PAGE		PAGE
Matrimonial Causes Act		Nurseries and Child-Minders	
1973— <i>continued</i>		Regulation Act 1948 (17	
s. 43	117	Statutes 583)	267
(1)	87, 88	Official Solicitor Act 1919	165
(2), (3)	89	Reserve and Auxiliary Forces	
(4)	87, 89, 91	(Protection of Civil Inter-	
(5)	89, 90, 91, 309	ests) Act 1951 (29 Statutes	
(6)	89, 90	708)	101
44	117	Supreme Court of Judicature	
(2)	94	(Consolidation) Act 1925 (7	
50	192	Statutes 573; 25 Statutes 708)	165
52	205, 213	s. 56 (1)	44
(1)	212	115, 129	165
Sch. 2	87, 89, 94	Sch. 4	165
Matrimonial Proceedings		Tenures Abolition Act 1660	
(Magistrates' Courts) Act		(27 Statutes 298)	2
1960 (17 Statutes 241)—		Wards and liveries (1541)	2
s. 2 (1)	89		
Mental Health Act 1959 (25			
Statutes 42)	273, 284		
s. 103(1)	41, 166		

Table of Cases

In the following Table references are given to the English and Empire Digest where a digest of each case will be found.

	PAGE
A (an infant), Re [1955] 2 All ER 202, sub nom. Re Aster [1955] 1 WLR 465, 99 Sol Jo 276, CA, 32 Digest (Reissue) 46	105, 262
A (an infant), Re (1959) Times, March 25, CA	337
A (infants), Re [1970] Ch. 665, [1970] 3 All ER 184, [1970] 3 WLR 142, 114 Sol Jo 415, CA, 11 Digest (Reissue) 578	342, 343, 353
A (an infant), Re, Hanif v Secretary of State for Home Affairs. See Arif (Mohamed) (an infant), Re	
A v A [1974] Fam 6, [1974] 1 All ER 755, [1974] 2 WLR 106, 118 Sol Jo 77, Digest Cont Vol D 432	205, 212, 213
A and JP (infants), Re (1977) 127 NLJ 1151, Court of Appeal (Civil Division) Transcript No. 23 of 1977	349
AB (an infant), Re [1948] 2 All ER 727, [1949] LJR 21, 64 TLR 573, 92 Sol Jo 646, 28 (2) Digest (Reissue) 835	169
AB (an infant), Re [1954] 2 QB 385, [1954] 2 All ER 287, [1954] 3 WLR 1, 118 JP 318, 98 Sol Jo 391, 52 LGR 421, 28 (2) Digest (Reissue) 940	315, 317
AB (a minor), Re, Court of Appeal (Civil Division) Transcript No. 150 of 1977	103, 104
A-H (infants), Re [1963] Ch 232, [1962] 3 All ER 853, [1962] 3 WLR 1430, 106 Sol Jo 1011, 28 (2) Digest (Reissue) 914	193, 215
A-W (minors), Re (1975) 5 Fam Law 95	65, 74, 143, 177
Adoption Application 41/61, Re [1963] Ch 315, [1962] 3 All ER 553, [1962] 3 WLR 997, 126 JP 511, 106 Sol Jo 649, 60 LGR 478, CA, 28 (2) Digest (Reissue) 835	133, 134
Adoption Application No 41/61 (No. 2), Re [1964] Ch 48, [1963] 2 All ER 1082, [1963] 3 WLR 357, 127 JP 440, 107 Sol Jo 573, 61 LGR 470, 28 (2) Digest (Reissue) 840	263
Andrews (infants), Re, Sullivan v Andrews [1958] Ch 665, [1958] 2 All ER 308, [1958] 2 WLR 946, 102 Sol Jo 382, 28 (2) Digest (Reissue) 914	214, 215
Andrews v Andrews and Sullivan and Sullivan [1958] P 217, [1958] 2 All ER 305, [1958] 2 WLR 942, 102 Sol Jo 384, 28 (2) Digest (Reissue) 920	214
Ansah v Ansah [1977] Fam 138, [1977] 2 All ER 638, [1977] 2 WLR 760, 121 Sol Jo 118, CA, Digest Supp	157, 159, 161

Arif (Mohamed) (an infant), Re [1968] Ch 643, [1968] 2 WLR 1290, sub nom. Re A (an infant), Hanif v Secretary of State for Home Affairs [1968] 2 All ER 145, 112 Sol Jo 190; affd. sub nom. Re Mohamed Arif (an infant) [1968] Ch 650, [1968] 2 WLR 1297, sub nom. Re A (an infant), Hanif v Secretary of State for Home Affairs [1968] 2 All ER 149, 112 Sol Jo 190, CA, 2 Digest (Reissue) 205	22, 23, 41, 73, 82, 123, 230, 360
A-G v James [1962] 2 QB 637, [1962] 1 All ER 255, [1962] 2 WLR 740, 106 Sol Jo 245, Digest Cont Vol A, 456	155, 162
B (infants), Re [1962] Ch 201, [1961] 3 WLR 494, 105 Sol Jo 682, 59 LGR 475, sub nom. Re Baker (infants) [1961] 3 All ER 276, 125 JP 591, CA, 28 (2) Digest (Reissue) 912	105, 287, 294
B (JA) (an infant), Re [1965] Ch 1112, [1965] 2 All ER 168, [1965] 3 WLR 253, 109 Sol Jo 556, 28 (2) Digest (Reissue) 916	7, 36, 107, 137, 138, 142, 143, 151, 154, 158, 159, 160, 162
B (a minor) (wardship: child in care) [1975] Fam 127, [1975] 2 All ER 449, [1975] 2 WLR 569, 119 Sol Jo 133, Digest Cont Vol D 523	152
B (a minor) (wardship: child in care), Re [1975] Fam 36, [1974] 3 All ER 915, [1975] 2 WLR 302, 139 JP 87, 119 Sol Jo 165, 72 LGR 691, Digest Cont Vol D 529	105, 106, 178, 261, 287, 290, 291, 293, 303, 357
B (minors), Re (1977) Times, July 23	197
B, Re, Court of Appeal (Civil Division) Transcript no. 237 of 1976:	96, 173, 195
B-'s Settlement, Re, B v B [1940] Ch 54, [1951] 1 All ER 949n, 109 LJ Ch 20, 56 TLR 30, 28 (2) Digest (Reissue) 861	336, 337, 338, 339
B (M) v B (R) [1968] 3 All ER 170, [1968] 1 WLR 1182, 112 Sol Jo 504, CA, 27 (2) Digest (Reissue) 908	65, 74, 143, 144, 176
B and S (infants), Re, Court of Appeal (Civil Division) Transcript No. 292 of 1976	149
Babington v Babington 1955 SC 115, 1955 SLT 170, 11 Digest (Reissue) 579	26, 28, 29, 34
Bailey (a bankrupt), Re, ex parte Trustee of bankrupt v Bailey [1977] 2 All ER 26, [1972] 1 WLR 278, 120 Sol Jo 753, Digest Supp	128
Baker (infants), Re. See B (infants), Re	
Balogh v St Albans Crown Court [1975] QB 73, [1974] 3 All ER 283, [1974] 3 WLR 314, 138 JP 703, 118 Sol Jo 582, CA, Digest Cont Vol D 253	140
Baldrian v Baldrian (1974) 4 Fam Law 95	83
Baldrian v Baldrian (1974) 4 Fam Law 12, CA	66, 83, 94
Barbour's Settlement, Re, National Westminster Bank v Barbour [1974] 1 All ER 1188, [1974] 1 WLR 1198, 118 Sol Jo 681, Digest Cont Vol C 1013	181
Barkworth v Barkworth 1913 SC 759, 50 Sc LR 504, 1 SLT 299, 11 Digest (Reissue) 579	27
Barnardo v McHugh [1891] AC 388, [1891-4] All ER Rep 825, 61 LJQB 721, 65 LT 423, 55 JP 628, 40 WR 97, 7 TLR 726, HL, 16 Digest (Repl) 307	4

	PAGE
Bawden v Bawden [1978] 3 All ER 1216, [1978] 3 WLR 798, 74 LGR 347, CA	278, 279
Bevan v Hastings Jones [1978] 1 All ER 479, [1978] 1 WLR 294, 142 JP 156, 122 Sol Jo 146	160
Bishop, Re, ex parte Langley, ex parte Smith (1879) 13 Ch D 110, 49 LJ Boy 1, 41 LT 388, 28 WR 174, CA, 28 (2) Digest (Reissue) 1146	153
Bolton v Bolton [1891] 3 Ch 270, 60 LJ Ch 689, 65 LT 698, 7 TLR 703, CA, 28 (2) Digest (Reissue) 916	140
Bonnard v Perryman [1891] 2 Ch 269, [1891-4] All ER Rep 965, 60 LJ Ch 617, 65 LT 506, 39 WR 435, 7 TLR 453, CA, 22 Digest (Reissue) 601	115
Bramblevale Ltd, Re [1970] Ch 128, [1969] 3 All ER 1062, [1969] 3 WLR 699, 113 Sol Jo 775, CA, Digest Cont Vol C 274	152, 161
Brown v Collins (1883) 24 Ch D 56, 53 LJ Ch 368, 49 LT 329, 28 (2) Digest (Reissue) 911	4
Brown's Will, Re (1881) 18 Ch D 61, 50 LJ Ch 724, 44 LT 757, 30 WR 171, CA, 48 Digest (Repl) 361	232
Burgh v Wentworth (1576) Cary 54, 21 ER 29, 28 (2) Digest (Reissue) 721	2
C (an infant), Re (1956) Times, December 14	15, 24
C (an infant), Re [1959] Ch 363, [1958] 2 All ER 656, [1958] 3 WLR 309, 102 Sol Jo 582, 11 Digest (Reissue) 736	19, 20, 21, 82
C (CA) (an infant), Re [1964] 2 All ER 478, [1964] 1 WLR 857, 108 Sol Jo 444, 28 (2) Digest (Reissue) 903	189
C (A) (an infant), Re [1966] 1 All ER 560, [1966] 1 WLR 415, 130 JP 146, 110 Sol Jo 212, 64 LGR 186, 28 (2) Digest (Reissue) 917	319
C (MA) (an infant), Re [1966] 1 All ER 838, [1966] 1 WLR 646, 130 JP 217, 110 Sol Jo 309, 64 LGR 280, CA, 28 (2) Digest (Reissue) 837:	42, 167, 259
C (an infant), Re (1969) Times, June 18	79
C (a minor), Re (1976) 6 Fam Law 211	58, 346, 349
C (a minor), Re [1978] LS Gaz R 711	93, 106, 358
C (minors) (wardship: jurisdiction), Re [1978] Fam 105, [1978] 2 All ER 230, [1977] 3 WLR 561, 121 Sol Jo 693, CA	31, 93, 227, 255, 347, 357, 362
C v C (1972) Times, November 7	196
CSC (an infant), Re [1960] 1 All ER 711, [1960] 1 WLR 304, 124 JP 260, 104 Sol Jo 269, 28 (2) Digest (Reissue) 845	246, 259
Cahill v Cahill (1975) 5 Fam Law 16, CA	231, 251
Chester, Re (1975) 62 DLR (3 ^d) 367	18
Chrysanthou, Re [1957] CLY 1748	24
Cinderby v Cinderby (1978) 122 Sol Jo 436	160
Clark v Clark (1970) 144 Sol Jo 318	198
Crump (an infant), Re (1963) 107 Sol Jo 682	139, 152, 156, 162, 203, 205
Cruse v Chittum [1974] 2 All ER 940, 118 Sol Jo 499, 11 Digest (Reissue) 551	35
Cullimore (a minor), Re (1976) Times, March 24	179, 187, 303, 304

	PAGE
D (an infant), Re [1943] Ch 305, [1943] 2 All ER 411, 112 LJ Ch 237, 169 LT 313, 59 TLR 354, 87 Sol Jo 290, 28 (2) Digest (Reissue) 861: . 4,	15, 44, 45
D (infants), Re [1970] 1 All ER 1088, [1907] 1 WLR 599, 134 JP 387, 114 Sol Jo 188, 68 LGR 183, CA, 28 (2) Digest (Reissue) 942 . . . 186	
D (minors), (wardship: jurisdiction) Re [1973] Fam 179, [1973] 2 All ER 993, [1973] 3 WLR 53, 117 Sol Jo 525, Digest Cont Vol D 521 86, 222, 223, 225, 226, 227, 221, 254	
D (a minor), Re (1976) 126 NLJ 104 77	
D (a minor) (wardship: sterilisation), Re [1976] Fam 185, [1976] 1 All ER 326, [1976] 2 WLR 279, 119 Sol Jo 696, Digest Supp . 8, 37, 48, 74, 76, 84, 108, 109, 128, 130, 144, 163, 168, 170, 174, 232, 265, 358	
D (a minor) (justices' decision: review), Re [1977] Fam 158, [1977] 3 All ER 481, [1977] 2 WLR 1006, 141 JP 669, 121 Sol Jo 355, 75 LGR 845, Digest Supp . . 225, 233, 249, 271, 282, 286, 287, 304, 357, 363	
D (an infant) (parent's consent), Re [1977] AC 602, [1977] 1 All ER 145, [1977] 2 WLR 79, 141 JP 110, 121 Sol Jo 35, HL, Digest Supp 253, 263	
D, Re [1978] LS Gaz R 857 123	
D (a minor), Re (1978) 122 Sol Jo 193; Times, February 14 . 59, 179, 182, 296, 297, 306, 319	
D, Re, Court of Appeal (Civil Division) Transcript of 1977 . . 83, 95	
D v B (otherwise D) (child: surname) [1979] 1 All ER 92, [1978] 2 WLR 573, 122 Sol Jo 486 208, 239, 308	
DA (infants), Re, Court of Appeal (Civil Division) Transcript No. 171 of 1976 96, 198	
Danchevsky v Danchevsky [1975] Fam 17, [1974] 3 All ER 934, [1974] 3 WLR 709, 118 Sol Jo 701, CA, Digest Cont Vol D 258 . . . 162	
Davis (infant), Re (1894) 24 OR 579, 28 (2) Digest (Reissue) 809 . 337	
Dawson v Jay, Re Dawson (1854) 3 De GM & G 764, 23 LTOS 53, 2 WR 366, 43 ER 300, 28 (2) Digest (Reissue) 919 335	
De Beaujeu's Application, Re [1949] Ch 230, [1949] 1 All ER 439, [1949] LJR 1028, 65 TLR 143, 93 Sol Jo 118, 16 Digest (Repl) 41: . 147, 149	
De Manneville v De Manneville (1804) 10 Ves 52, 32 ER 762, 28 (2) Digest (Reissue) 922 101	
Di Savini v Lousada. See Savini, Re, Savini v Lousada	
Downing v Downing (Downing intervening) [1976] Fam 288, [1976] 3 All ER 474, [1976] 3 WLR 335, 120 Sol Jo 540, Digest Supp 100, 266	
Dunhill (an infant), Re (1967) 111 Sol Jo 113 36, 83, 235	
E (an infant), Re [1956] Ch 23, [1955] 3 All ER 174, [1955] 3 WLR 493, 99 Sol Jo 726, 28 (2) Digest (Reissue) 791 6, 57, 87, 95, 103	
E (an infant), Re [1963] 3 All ER 874, [1964] 1 WLR 51, 108 Sol Jo 75, 28 (2) Digest (Reissue) 800 105, 231, 258, 259, 260, 261	
E (an infant), Re [1967] Ch 287, [1967] 1 All ER 329, [1967] 2 WLR 445; 111 Sol Jo 34; affd. [1967] Ch 761, [1967] 2 All ER 881, [1967] 2 WLR 1370, 111 Sol Jo 352, CA, 28 (2) Digest (Reissue) 802 . . 341, 343	

	PAGE
Elwes, <i>Re</i> (1958) <i>Times</i> , July 30 [1958] CLY 1620	12, 77, 151, 152, 203, 205
Engelke v Musmann [1928] AC 433, [1928] All ER Rep 18, 97 LJKB 789, 139 LT 586, 44 TLR 731, HL, 11 Digest (Reissue) 738	20, 21
Eyre v Countess of Shaftesbury (1722) 2 PWms 103, 2 Eq Cas Abr 710, 24 ER 659, sub nom. Earl of Shaftesbury v Shaftesbury Gilb Ch 172, 37 Digest (Repl) 39	139
F (an infant), <i>Re</i> [1970] 1 All ER 344, 113 Sol Jo 960, 68 LGR 88, sub nom. <i>Re</i> FT (infant) [1970] 1 WLR 192, CA, 28 (2) Digest (Reissue) 709	253, 262, 263
F (a minor) (access out of jurisdiction, <i>Re</i> [1973] Fam 198, [1973] 3 All ER 493, [1973] 3 WLR 461, 117 Sol Jo 616, Digest Cont Vol D 519	95
F (a minor) (wardship: appeal), <i>Re</i> [1976] Fam 238, [1976] 1 All ER 417, [1976] 2 WLR 180, 120 Sol Jo 46, CA, Digest Supp: 67, 235, 236, 246	
F (otherwise A) (a minor) (publication of information), <i>Re</i> [1977] Fam 58, [1976] 3 All ER 274, [1976] 3 WLR 307, 120 Sol Jo 421; revsd. [1977] Fam 58, [1977] 1 All ER 114, [1976] 3 WLR 813, 120 Sol Jo 753, CA, Digest Supp	78, 107, 138, 140, 141, 145, 146, 147, 148, 150, 152, 155, 156, 159, 185, 186, 187, 202, 204
F v F [1959] 3 All ER 180, [1959] 1 WLR 863, 103 Sol Jo 659, 27 (2) Digest (Reissue) 906	88, 89
F v S (adoption: ward) [1973] Fam 203, [1973] 1 All ER 722, [1973] 2 WLR 178, 137 JP 301, 117 Sol Jo 109, CA, Digest Cont Vol D 524	74, 81, 91, 248, 252, 261
Falkland v Bertie (1698) 2 Vern 333, [1558-1774] All ER Rep 396, Holt KB 230, 23 ER 814, sub nom. Bertie v Faulkland, 1 Eq Cas Abr 110, Freem Ch 220, 3 Cas in Ch 129, 12 Mod Rep 182, 1 Salk 231; on appeal Colles 10, HL, 28 (2) Digest (Reissue) 714	2
Fowler v Fowler and Sines [1963] P311, [1963] 1 All ER 119, [1963] 2 WLR 155, 107 Sol Jo 33, CA, 27 (2) Digest (Reissue) 910	197, 198
Fraser v Evans [1969] 1 QB 349, [1969] 1 All ER 8, [1968] 3 WLR 1172, 112 Sol Jo 805, CA, 28 (2) Digest (Reissue) 1090	115
G (infants), <i>Re</i> [1963] 1 All ER 370, [1963] 1 WLR 1169, 127 JP 549, 107 Sol Jo 682, 61 LGR 530, 28 (2) Digest (Reissue) 943	300
G (an infant), <i>Re</i> [1969] 2 All ER 1135, [1969] 1 WLR 1001, 113 Sol Jo 486, 28 (2) Digest (Reissue) 796	25, 29, 30
G v G (1962) 106 Sol Jo 858	89
G—v L—[1891] 3 Ch 126, 60 LJ Ch 705, 40 WR 10, sub nom. <i>Re</i> Infant, G v L 64 LT 732, 7 TLR 589, 28 (2) Digest (Reissue) 922	115, 152
Gay, <i>Re</i> [1926] 3 DLR 349, 590 LR 40, 11 Digest (Reissue) 564	337
H (an infant), <i>Re</i> [1959] 3 All ER 746, [1959] 1 WLR 1163, 124 JP 74, 103 Sol Jo 1003, 28 (2) Digest (Reissue) 864	235, 236
H (infants), <i>Re</i> [1965] 3 All ER 906, [1966] 1 WLR 381; affd. [1966] 1 All ER 886, [1966] 1 WLR 381, 110 Sol Jo 88, CA, 11 Digest (Reissue) 577	83, 103, 180, 338, 340, 341, 342