

ISSUES AND HOLDINGS STUDY CHART

CSI 2212G – Childhood & the Law – P. Ryan

Name	Issue	Notes
<p>E. v. Eve [1986] SCC</p>	<p><i>parens patriae</i> Best Interests Test Involuntary Sterilization Disability Rights Eugenics</p> <p>Wilson pg.2-3</p>	<p>1a. Q: What is the scope of <i>parens patriae</i>? Ans. Unlimited 1b. Q: What is the test for the appropriate deployment of this common law jurisdiction by the courts? Ans: the best interests of the “person in need of protection, and not the benefit of others.” 2a. Q: Can <i>parens patriae</i> be used for non-therapeutic procedures? Ans: No. 2b. Q: In the absence of informed consent, can sterilization be defined as therapeutic or beneficial? Ans: No, and therefore PP cannot be used as a common law jurisdiction to order sterilizations where statutory law does not grant courts this power.</p>
<p>Canadian Foundation CYL v. Canada (AG) [2004] SCC</p>	<p>s. 43 of the Criminal Code Corporal Punishment Charter of Rights and Freedoms</p>	<p>1. Does s. 43 of the Code infringe the rights of Children under s. 7 of the Charter – life, liberty, and security of persons? Ans: No 2. Does s. 43 of the Code infringe the rights of Children under s. 12 of the Charter – cruel and unusual punishments? Ans: No 3. Does s. 43 of the Code infringe the rights of Children under s. 15(1) of the Charter – equality under the law? An: No Note: The Majority was able to answer ‘no’ by ‘reading down’ the statute into a “reasonable” form to protect the ‘security of persons’ challenge, and by evoking of doctrine of ‘corresponding needs’ (separate but equal) response to the equality challenge.</p>
<p>R.B. v. CAS Metro. Toronto [1995] SCC</p>	<p>Child Welfare Act s. 7 and s. 2 Charter Parental Rights</p> <p>Wilson, pg. 292</p>	<p>Q: Was the s 19(1,b,ix) of the Child Welfare Act, which empowered the court to grant the CAS temporary wardship: A - contrary to the parent’s s.7 ‘security of person’ B - contrary to the parent’s s.2 ‘freedom of religion’ ANS: 1 - “The state can properly intervene in situations where parental conduct falls below the socially acceptable threshold, but in doing so it is limiting the constitutional rights of parents rather than vindicating the constitutional rights of children.” 2 - The application of the statutory law in this case violated the s.7 rights of the parents, but it did so “in accordance with the principles of fundamental justice.” 3 - The application of statutory law in this case violated the s.2 rights of the parents, “the infringement was justified, however, under s. 1 of the Charter.”</p>