

Children's Rights: The beginning

Most of us examine and treat children every day, affording them special consideration and assimilating a myriad of children's social and legal rights during our interactions. Children's rights grew out of the humanitarian crisis left in the wake of World War 1. Seeing children being neglected, living in extreme poverty and being used as child labour, a young British social reformer named Eglantyne Jebb took action: She started handing out pamphlets on Trafalgar Square to raise awareness, and was promptly arrested. Fortunately she appeared before a like-minded judge who agreed that children have a right to food, health care, education and protection from exploitation. He fined her, but was so impressed with her fervour that he paid her fine himself. In 1919 she founded [Save the Children](#) and continued her work in the aftermath of the war. Her Declaration on the Rights of the Child was adopted by the League of Nations in 1924 and was developed into the UN Convention on the Rights of the Child (UNCRC). On 20 November 1959 the UN General Assembly adopted the Declaration of the Rights of the Child. On the same day in 1989, the UN General Assembly adopted the Convention on the Rights of the Child. Children's Day is celebrated on 20 November.



Today

Legislation around children's rights in South Africa has developed organically and reactively, resulting in a disjointed and rather messy quagmire of often contradicting legislation. Let's start from the top and try to tease it all out. The 'top' when it comes to legislation in South Africa, is the Constitution.

[Section 28 of the Bill of Rights](#) says that every child has the right to -

- a name and a nationality from birth;
- family care or parental care, or to appropriate alternative care when removed from the family environment;
- basic nutrition, shelter, basic health care services and social services;
- be protected from maltreatment, neglect, abuse or degradation;
- be protected from exploitative labour practices
- not be required or permitted to perform work or provide services that - are inappropriate for a person of that child's age; or
- place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development...

A child's best interests are of paramount importance in every matter concerning the child.

What is the definition of a child?

In terms of the Constitution, a child is a person under the age of 18 years. The Children's Act 38 of 2005 (s17) [reduced](#) the age of majority from 21 years to 18, to align with the Constitution. This change took effect on 1 July 2007, with some [interesting ramifications](#).



To illustrate how some of the legislation relating to children may operate, I've made up a complete fictitious and somewhat unlikely scenario of a group of minors in a healthcare environment. I doubt it's the beginning of an award - winning screenplay, but allow me to

introduce the main characters: G (Girl) and B (Boy), both aged 17. The supporting cast includes G's family, Mr and Mrs X and her younger sister S. G meets the mom of 2 girls: O – the older of the two, and Y – the younger.

The rights of a child when consulting a health care provider

Mrs X has dropped her daughter G (17) and a group of young people from their neighbourhood off at the local medical centre. They all have appointments with various providers, and have agreed to meet at the coffee shop in a few hours. G has made an appointment at the optometrist. She confirms her dad's medical aid details, signs the POPI Act section, and updates her address because she and her boyfriend B (aged 17) will soon be moving in together. She sits down to wait. She's had an easy pregnancy so far, but has been feeling tired in her last trimester.

Which laws are relevant?

In terms of the Domicile Act 3 of 1992 (s1), every person has a domicile, i.e. where you have your permanent home. One may be temporarily absent, but with the intention of returning. A minor's domicile is typically with her parent(s) and she may change it, but only at 18 or if she reaches majority through some other process.

The information that we are likely to require as healthcare providers is not only personal information, but likely to be [special personal information](#). The Protection of Personal Information (POPI) Act [defines a child](#) as 'natural person under the age of 18 years who is not legally competent, without the assistance of a competent person, to take any action or decision in respect of any matter concerning him- or herself.'



Contracting

A child acquires legal capacity to enter into a contract at 18 in terms of the Children's Act 38 of 2005 (ss 17, 18(3)(b)), with common law. A child under 18 can enter into a contract (without the assistance of a parent or guardian) if the

contract is about the child acquiring rights but no obligations. Only if assisted by a parent or guardian can a child under 18 enter into a contract where s/he acquires both rights and obligations. Mrs X phoned to make the appointment and requested a driver's license certificate for G after the examination. G will be taking her learner's license test soon, and she wants to be prepared. Mrs X had separately notified the optometrist by email that G has hardly worn her special myopia management contact lenses (CLs) in the last few months. G and her younger sister S are both short sighted, and Mrs X is wants both the girls to continue with the treatment because she is very short sighted herself. If necessary, the onus would be on the practitioner to prove consent to processing G's personal information. The family are all patients, but record of the phone call and the email could be saved with G's records, to support.

G explains to her optometrist that her contact lenses have been less comfortable for the past few months, that she has defaulted to her glasses. She'd been wearing the lenses as prescribed, and using the solutions as prescribed. As regular patients, the optometrist has come to know G and the X family well over the years. She notices that G had gained some weight, but with the teenage uniform of a shapeless hoodie, she hasn't realised that G is pregnant. She checks her records. No medications listed, health is good. During the examination, she asks G again about new medications: 'Could it be my pregnancy supplements?' Hmmm, a whole other conversation, she smiles. 'Your pregnancy itself, more than the supplements.' For those of you

who are not optometrists, pregnancy and hormone changes, even while breastfeeding, affect CL tolerance and fitting.

Here we have a parent, who has instructed that a minor must resume her myopia management treatment, and a minor who doesn't want to. Please remember that this whole scenario is fictitious, and clinically, myopia

management is likely to be stopped at around 18 anyway because the progression tends to stabilise. The point is: Can a minor refuse or stop treatment, especially when this goes against her parent(s)'s wishes?



Refusing healthcare

The right of a child of any age to refuse healthcare, is deduced from three pieces of legislation:

1. The Children's Act 38 of 2005, s129(2)(3) and (8), which says the Minister of Social Development can consent to medical treatment or surgery of the child if the child unreasonably refuses to give consent, which implies that the child's refusal must be respected if it's not unreasonable.
2. The National Health Act 61 of 2003, s6(1)(d) requires a health care practitioner to inform patients, including minor patients with the capacity to consent, about their right to refuse treatment.
3. Finally, children's Constitutional right to bodily integrity in s12(2).

While we must conclude that children do have a right to refuse treatment, the general rule is that only a child that has attained the relevant age of consent (12 and older) and who is mature enough to understand the risks

and consequences of refusing, can validly exercise a right to refuse health care. (Spoiler alert: Consent to care will come up again.)

Minors in administrative acts

Meanwhile B has gone to the medical aid/ insurance offices in the centre to secure long-term healthcare insurance for himself. He has the required proof of address and copies of his bank account. He knows that the Banks Act 94 of 1990 (s87(1)) allows a child (from 16 years) to have a bank account, execute the necessary documents, deposit, cede, pledge, borrow against and generally deal with his deposit and can enjoy all the privileges and be liable for all the obligations and conditions applicable to depositors as if he was a major (adult). He knows he cannot apply for credit in his personal capacity until he is 18. (National Credit Act 34 of 2005, section 60(1) read with sections 61(4) and 89(2)(a)) That means we may not offer our minor patients payment plans/ terms.

He and G will stay on their parents' medical aids after the baby arrives, but he is disappointed to learn that he cannot take 'an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied' until he is 18. (Long-term Insurance Act 52 of 1998, ss 1 and 58)

Now that they are going to be a family, B and G have made their own wills – allowed from the age of 16 – and G's godparents have witnessed the documents as required by the Wills Act 7 of 1953, s 4.) B's younger brother J wanted to be one of the witnesses, but he would only be allowed if he were 14 or over (s1).

All the adulting they've had to do of late has made B quite anxious. G even insisted on them registering as voters. They are going to be parents, and it's a citizen's privilege and duty, she said. They have registered, as one can from

the age of 16, but their names will only appear on the voters' roll once they turn 18. (Electoral Act 73 of 1998, ss 1 and 6). At least they had applied for their IDs at 16, the minimum age provided for in the Identification Act 68 of 1997 (s15.)

She has also insisted that they register as organ donors. From the age of 16, a child can agree to donate their body or any specific tissue in the event of their death in terms of section 2 of the Human Tissue Act 65 of 1983, read with section 4 of the Wills Act 7 of 1953. They may not consent to donate their organs (e.g. kidneys) while they are alive until they are 18, and consent by an adult is not possible either, since human tissue which is not replaceable by natural process (like kidneys) cannot be removed for donation from a person younger than 18. B has donated blood since he was 14 – the age where one is first allowed to consent to donating human tissue that is replaceable by natural processes (e.g. skin and blood) according to the Human Tissue Act 65 of 1983.

Naturally they've been thinking of names, and in a flash of whimsy and hormones – he's assuming everything that he doesn't understand about her is hormone-related at the moment – G wanted to change her name. He was quite relieved when the clerk said that nobody under 18 could change their forename or surname without parental consent. 'What if we were married? Would I have to wait until I was 18 to take my husband's name?' B more or less fainted at the word 'married', and heard nothing further. But the helpful clerk had said: 'Of course not, a child under 18 who has contracted a valid marriage is considered a major or 'person of age' and can apply for a change of her forename or surname by herself in terms of the Births and Deaths Registration Act 51 of 1992, ss 24 and 25 read with the definition of 'major' or 'person of age' in s1.) Also, continued the clerk, obviously on a roll, any person whose sexual characteristics have been altered or has undergone gender reassignment, or have had their sexual characteristics

altered through surgery, medical treatment or evolvment through natural development can apply to have the birth register changed at any age...(Alteration of Sex Description and Sex Status Act 49 of 2003, s2.) Of course, the treatment itself required consent but G thanked the clerk and rescued B, who was starting to look quite ill.



Going to School

Back at the optometrist, G has started chatting with another lady who is waiting for her children to be seen. 'It goes so quickly', she was saying. 'My O is going into grade 1 already, as she must, in terms of the South African Schools

Act 84 of 1996, S 5(4)(a)(i) and (ii) in the year that she is 5, turning 6 by end of June in the year of admission. Then Y is 4, turning 5 by the end of June so must go into Grade R. Y is impossible, I've had her at every practitioner in this centre. I don't know how I'm going to get her to stay in school until she's 15, or Grade 9, although I suspect 15 is going to come before Grade 9. But that's what's required. She was born with cataracts. We noticed that her eyes looked different, but we hoped that she would outgrow it. She was about 6 months old when we brought her here for a check and the optometrist diagnosed cataracts. She was referred for cataract surgery and had to wear thick glasses after that. The medical aid rejected the claim for her spectacles shortly after her cataract surgery. We paid for them ourselves while the optometrist sent motivation letters to the medical aid, their administrator, eventually also to the regulator and the media... We've been told that Y will never see normally, very likely because of the delays in treatment. G's dad – Mr X – is an attorney. Her heart aches for the family, the failure of justice, and their frustration at having a child born in a private hospital, covered by a medical aid, protected by a Constitution and legislation governing the provision of the prescribed minimum benefits (PMBs) and still not getting the

treatment they should have. G didn't know what [PMBs](#) were, so Y's mom explains: 'It's a list of conditions contained in the regulations enacted under the Medical Schemes Act 131 of 1998 that medical aids are obliged to pay for. The type of spectacles that Y needed after her cataract surgery should have been covered by the medical aid because cataracts are on the PMB list, but the medical aid have an internal policy of rejecting all claims for children under 10 and demanding a motivation for the optometrist's claim. Oh, there she goes, running down the passage again... Let me go and get her. She's very fast for someone with such poor eyesight!'

Mr X, the attorney, is given to using weird language, peppered with Latin, for effect. G is wondering whether he could help Y and her family get some sort of restitution or compensation from the medical aid for delaying treatment. He seems to be well informed on the rights of children. Just recently he had said, without context: 'A child must attend school from the first day of school in the year that they will turn 7. The parents or any person who prevents the child from attending school will be guilty of an offence if they fail to ensure, without any good reason, that the child attends school. However, parents can apply to have their children educated at home.' (South African Schools Act 84 of 1996. Sections 3(1) and 3(6)(a) read with section 51) Do you know, says Mr X, that Aunt M and Uncle N get fined, individually, for each of your cousins, for each day they aren't in school? G wasn't sure what point he was trying to make so she just smiled and said 'Yes, Daddy, but you are not the parent, and that's in the UK. And don't worry, I would never try to home school a child.' Mr X is relieved. He believes in a solid education and is pleased that the children have agreed to at least finish matric. G has expressed interest in following in his footsteps and studying law, once the baby is a little older. Now that the shock has passed, he is quite excited about his grandchild. He is so convinced that it's a boy that he has already registered the baby at the prestigious private school that he attended.

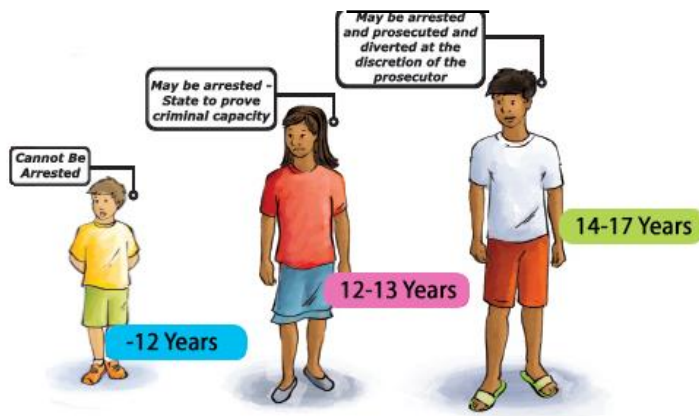
Mrs X has had a harder time getting over the news that she is to be a grandmother. 'It's a crime, our G is only 17, it can't be legal!' Mr X, not helping, chose this moment to tell her that in fact their daughter had been presumed to be capable and mature enough to consent to sex in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, since her 16th birthday. He misinterpreted the increased pitch and tone of her lament and continued his explanation with more fervour to help her see reason. From age 12 – age 16, a child is presumed capable, but not mature enough to consent. So even with G's consent, it would have been a crime only if she was 12 – 16 years old. Under 12, a child is incapable of consenting to sex, so anyone doing so is committing rape or sexual violation in terms of the Criminal Law (Sexual Offences and Related Matters Amendment Act 32 of 2007, ss 57, 1(2), 1(3)(d)(iv)).

From time to time Mr X finds his wife sobbing at the kitchen table, or having to dry her tears before she can check her WhatsApps. When he asks, it's always about the children being too young, or that she'd hoped they'd get married first. Despite what people say about attorneys, he is a kind man and a problem solver. He knows his wife to be an intelligent woman, but as a maths teacher, she can't be expected to know, as he does, that it is possible for children under 18 to get married. True, in common law, the children need to be 18 to get married, but if the girl (like their G) is between 15 and 17 years old, only her consent and that of her parents is required. Fortunately B will be 18 in a few short weeks, because if the boy is over 14, but under 18, it's a little more cumbersome. (Marriage Act 25 of 1961, s 26(1) read with sections 17 and 18(3)(c)(i) of the Children's Act 38 of 2005. Similar requirements exist for customary law unions, relying on the Recognition of Customary Marriages Act 120 of 1998, s 3.)

The child in litigation

B is on his way to the optometrist's practice to join G when he hears shouting and crashing. He rushes over to investigate. Just as B gets to the door, Y slips

out, carrying several pairs of glasses. Two receptionists are in hot pursuit, one shouting 'Stop! Thief! Stop!' Y has grabbed some spectacle frames from the display and is being chased by the staff in order to retrieve them. Despite her poor sight, she had evaded the entire staff for several laps around the waiting room before finding the way out.



B runs after her and soon returns, carrying her gently, but holding her arms pinned firmly to her sides. He hands the frames to the receptionist and the child to her mother. 'My hero!' thinks G, gazing at B with admiration. 'I want that

wretched child in jail!' thinks the receptionist, still out of breath from running.

The Child Justice Act (CJA) and subsequent amendments address the way we deal with children (also defined as under 18's in this Act) in conflict with the law. Previously, both adults and children fell under Criminal Procedure Act 51 of 1977. The CJA seeks to protect the rights of the child in justice matters and to assist children suspected of committing crime, to turn their lives around and become productive members of society. In terms of the CJA, a child under 12 years does not have criminal capacity and cannot be charged or arrested. Children are referred to the Children's Court.

A child older than 12, but under 14, is presumed to lack criminal capacity. That means they cannot appreciate the difference between right and wrong and then choose to act in accordance with that appreciation. The assumption is rebuttable, i.e. the state can prove that they **do** have criminal capacity, in which case the child can be arrested. Older than 14, but under 18 years, the child is presumed to have criminal capacity and can be

arrested. The Child Justice Act provides for three different categories of offences:

- Minor offences include theft of property worth not more than R2500, malicious damage to property that is not more than R1500 and common assault.
- More serious offence could include robbery (but without aggravating circumstances), assault that includes causing grievous bodily harm, public violence, culpable homicide and arson.
- The most serious offences include robbery, rape, murder and kidnapping.

Little Y may be many things, but despite the receptionist's wishes, she will not be categorised as a thief under current legislation. For more on the process, please [click here](#).



So we see that a child is protected in litigation against them, but can a child litigate? On a practical level, most children will require the assistance of an adult, usually their parent, to access the courts. If the parents refuse to assist the child, are not available, or there is a conflict of interests between the child and the parent, the High Court must be requested (by the child or a person helping the child) to appoint a curator to assist the child. In cases where a child is unrepresented and the court is of the opinion that the child needs legal representation, the court can refer the matter to the Legal Aid Board to consider appointing a legal representative for her. Children appear in court most often in allocating access and care during cases of divorce, but what if young Y wanted to bring a claim against the hospital or the doctor who attended to her delivery and missed her cataracts?

I'm sure you've realised that many pieces of legislation address the rights of children, and that it can be quite complicated to put them together. The legislators have been promising a consolidated piece of legislation but I'm no longer holding my breath. Here's an example:

- The Bill of Rights in the Constitution gives everyone (including children) the right to access to courts and the right to have legal representation.
- Section 14 of the Children's Act entrenches every child's right to bring, and to be assisted in bringing, a matter to a court that has jurisdiction.
- However, the common law imposes restrictions on a child's right to participate in legal proceedings.

[Case law](#) clarifies that the common law age restrictions are not amended by the Children's Act, which provides for 'every child that is of such an age, maturity and stage of development ... to ... participate in an appropriate way' but does specify that the 'views expressed by the child must be given due consideration' (s10). The child's right to participate in judicial proceedings can either occur through direct participation 'or through a representative or an appropriate body, in a manner consistent with ... procedural rules'. This places a duty on parents and guardians to represent children and to assist them, while children over the age of seven years have the right in terms of s14 to insist on having their limited capacity to litigate supplemented by means of a parent, guardian, curator ad litem or the High Court. Finally, section 28 of the Constitution entrenches the paramountcy of the best interests of the child. So, should Y's parents wait for her to turn 7? Well, not necessarily. This is probably a good time for me to introduce you to a concept called legal prescription.



What is Legal Prescription?

Prescription is a legal concept that refers to a situation where the law provides that due to the passage of time, a debtor is no longer legally obliged to pay off an old debt.

In South Africa, prescription laws are governed by the Prescription Act 68 of 1969. The time limit for pursuing a legal claim depends on the type of claim and the circumstances surrounding it. In some cases, prescription is after 30 years (mortgage bond debts, judgment debts) or 15 years (debts owed to the State) or 6 years (notarial contract.) The prescription period for other debts – those we are most likely to encounter in practice – is 3 years

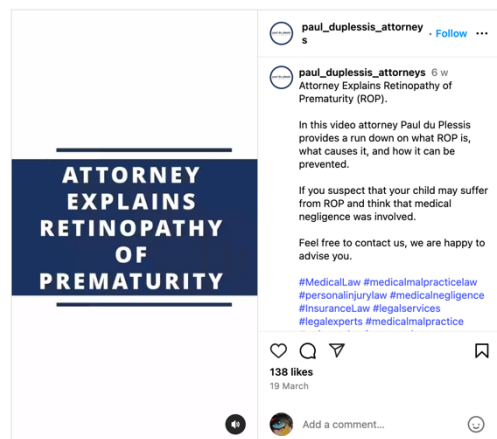
- Contractual claims - Three years from the date that the debt became due and payable. Example: D is assessed in a psychology/psychometry practice for aptitude assessment and career guidance. The practice bills D's parents on the day of the consultation. Should they avoid their debt for 3 years, without ever acknowledging it, the debt is extinguished.
- Delictual claims - Three years from the date that the cause of action arose. A delict is when a loss or injury is suffered as a consequence of someone's wrongful act or omission. If Y, during her running around, slips on a wet spot on the floor of the medical centre and suffers a concussion, the centre may have delictual liability. (We won't get into the legal requirements to prove a delict, but if Y had caused the puddle by dropping her drink, the centre would not be liable.) Y would have 3 years to claim for the damages that she had suffered.
- Claims for damages arising from personal injury - Three years from the date that the injury occurred or the date on which the claimant became aware of the injury. An inappropriately diagnosed or managed medical condition that results in long term loss of function would fit into this category. Generally, patients can only bring a

complaint against the practitioner and/ or facility for 3 years. Claims for damages may arise not only from missed diagnoses, but also from inaccurate diagnoses, e.g. [a case in Uganda](#) where a patient believed they were HIV+ and were taking ARVs for 7 years.

- Claims for damages arising from defective goods - Three years from the date that the goods were delivered to the claimant. If Mrs J is fitted with new dentures and starts getting temporal headaches, never returns and attempts to bring a claim against her dentist after 5 years, she would not be successful.

Generally, prescription starts to run as soon as the action occurs or the debt becomes due. In certain circumstances, however, prescription may be delayed or interrupted. If D's parents were to acknowledge the debt – the professional fees for his consultation – by requesting terms, for example, prescription would be interrupted and the 3 years would start running again from that date.

Now, if our Y decides at the age of 17 that she would like be a jeweller, only to discover that her visual limitations prevent her from pursuing her dream job, she may think of instituting legal action against the doctor/ hospital attending to her at birth. From what we know so far, her claim will have become time-barred and she would not be able to pursue it. As you may know, or expect, Y's rights are protected. While a child may bring legal action against a practitioner, assisted by a parent, their right to do so is protected until they reach majority, i.e. until they turn 18. Prescription runs for 3 years after that, until they are 21. As South Africa becomes increasingly litigious, the financial implications are increasingly onerous, especially for professions such



as pediatricians and obstetricians to maintain records and insurance, sometimes for decades.

After the age of 21, a patient can usually no longer bring a case against a practitioner for events that occurred when they were a child. Lowering the legal age of majority in 2007 had the consequence that a minor, aged 20 for example, may overnight have become a legal adult, and be 2 years into what would have been prescription. The courts dealt with some challenges, but in general, prescription ran from the effective date of the legislation: 1 July 2007.

Note that there are some unusual situations:

- There are ways of achieving legal majority before turning 18, which we won't get into, but may still be relevant in your practice. Most of our patients under 18 are entitled to protection under s28 of the Constitution.
- A child has full capacity to litigate in certain instances, e.g. where the child is sued for maintenance of his/her own child or where a child applies to the court for a protection order in terms of the Domestic Violence Act 116 of 1998. At the age of 18, a child becomes a major/adult and they can litigate in their own name.

Their final appointment for the day is with the gynaecologist, their last one before G's due date in a fortnight. Talking to Y's mom has awakened a new fear, so G wants to ask her about the risk of their baby having cataracts. The specialist assures her that babies are checked for cataracts after birth, and then again at later visits. (And yet Y was missed!)



They will also receive G's final HIV test results. She has tested negative so far, but this can change through the pregnancy.*

Counseling is always required prior to HIV-testing. A child under 12 can independently request HIV-testing if they are mature enough to understand the benefits, risks and

social implications of such disclosure. If they are under 12, or not mature enough to consent, a parent or caregiver's consent is needed (Children's Act 38 of 2005. Section 133 read with section 132.)

* This article covers legal principles only. For current clinical guidelines for HIV testing during pregnancy please [click here](#).

The doctor had explained their birth choices and encouraged them to discuss her recommendations with their parents. While B and G have involved their parents from the start, G feels strongly that she would like to make her own decisions about her baby, and not involve her parents. She knows that in terms of the Children's Act, s129(2) and (4), with s 31, a child aged 12 and above may consent to her own medical treatment, provided she is sufficiently mature and have the mental capacity to understand the benefits, risks and social implications of the treatment. The HPCSA (in their [Booklet 4](#), which is dedicated to Informed Consent) requires healthcare practitioners to assess a child's capacity to decide for themselves, together with the provisions of the Children's Act, 2005 s129(5) when allowing them to consent to or refuse a proposed investigation or treatment before they provide it.

The doctor has seen the couple throughout G's pregnancy and is confident of their maturity. She has even met Mr and Mrs X. However, for surgical treatment, G requires a parent to assent. Strictly speaking, she cannot independently give consent for a caesarean section.

Who else can consent?

'The superintendent of a hospital or the person in charge of a hospital in the absence of the superintendent may consent to the medical treatment of or a surgical operation on a child if the treatment or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability; and the need for the treatment or operation is so urgent that it cannot be deferred for the purpose of obtaining consent that would otherwise have been required. (Children's Act, section 129(6))

The [Minister of Health](#) may consent to the medical treatment of, or surgical operation on a child if the parent or guardian of the child unreasonably refuses to give consent or to assist the child in giving consent, is incapable of giving consent or of assisting the child in giving consent, cannot readily be traced, or is deceased (Children's Act, section 129(7)). The Minister may consent to the medical treatment of or surgical operation on a child if the child unreasonably refuses to give consent (Children's Act, section 129(8)). A [High Court or Children's Court](#) may consent to the medical treatment of or a surgical operation on a child in all instances where another person that may give consent refuses or is unable to give such consent (Children's Act, section 129(9)). No parent, guardian or care-giver of a child may refuse to assist a child or withhold consent by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned (Children's Act, section 129(10)).

Rather bizarrely, should her baby require surgery once it's born, G as the child's mother may consent to such surgery, despite being considered too young to consent to her own. B and G would like the baby to be circumcised if it's a boy.

Did you know, explains the doctor, that a boy older than 16 can, and must give consent for the procedure. The Act specifies that every male child has a right to refuse to be circumcised depending on his age, maturity and stage of development. A boy under 16 can only be circumcised for religious purposes or medical reasons. Either both parents, or all guardians (if there's more than one), have to consent to religious circumcision of a child under 16. A medical circumcision is regarded as a surgical procedure and the age of consent for that is 12, but the parent must assist the child to consent (Children's Act 38 of 2005. Sections 12(8), (9) and (10)).

Early on in the pregnancy, G and B had seen a counselor who had explained their options regarding the pregnancy. Should they consider terminating the pregnancy, the Choice on Termination of Pregnancy (CTOP) Act applies. For the purposes of the Act, a woman is 'any female person of any age,' and only the woman's consent is needed for the termination, provided she has the [necessary mental capacity](#) to give her informed consent by understanding and appreciating the benefits, risks, social and other implications of the termination of pregnancy. At first, B didn't like the thought of G being able to make this decision about their baby without consulting him, but the counselor gave them both some reading material and asked them to return for further discussion. One of the articles in the pack reported a study in [Ethiopia](#), which found that 33% of men said they were the sole decision-makers in their families when it came to childbearing. Another [study](#) from Nigeria found that women were less likely to attend antenatal care when they were not supported by their partners. In Burkina Faso, Zimbabwe and Uganda, the father's permission is required to terminate a pregnancy.

[Reading](#) about the risks and complications for those mothers, brought B to different insights.

- The [Constitution](#) (s12(2)) protects G's 'right to bodily and psychological integrity, which includes the right— (a) to make decisions concerning reproduction; (b) to security in and control over their body...' and B wanted that right protected for his partner, and his child.
- Situations differ. Their baby may be unplanned, but it is wanted. Not all fathers are involved, or they may even be untraceable. Requiring their permission could delay the procedure, adding unreasonable risk. The counselor had explained that all moms are encouraged to consult with their partners, where appropriate, and a minor would be advised to consult with their parents as well. Still, the termination cannot be refused if she refuses to consult with others. This position is confirmed by s129(1) of the Children's Act which specifies that s5(2) of the Choice on Termination of Pregnancy Act supersedes it.

The counselor had also told them that a child who is a parent can consent to the adoption of his/her own child provided that the child parent is assisted by his/her guardian (Children's Act 38 of 2005. Section 233 (1)(a)).

The doctor has encouraged B and G to use contraception from immediately after the birth of their baby. B has heard that nobody could refuse to sell or provide condoms to a child aged 12 or over (s 134(1) of the Children's Act 38 of 2005). Contraceptives other than condoms shall not be refused a child over 12, together with a proper medical examination and proper medical advice (Children's Act 38 of 2005, s 134(2)).

Conclusion

Legislators have been promising a review and a consolidation of legislation relating to children's rights for over a decade. I've stopped holding my

breath. If in any doubt, practitioners should seek expert counsel on what is allowed or required in dealing with patients under 18.

Legislation relating to children's rights.

[Constitution](#)

[Children's Act 38 of 2005](#)

Domicile Act 3 of 1992

Protection of Personal Information

National Health Act 61 of 2003

National Credit Act 34 of 2005

Banks Act 94 of 1990

Long-term Insurance Act 52 of 1998

Wills Act 7 of 1953

Electoral Act 73 of 1998

Identification Act 68 of 1997

Human Tissue Act 65 of 1983

Medical Schemes Act 131 of 1998

Births and Deaths Registration Act 51 of 1992

Alteration of Sex Description and Sex Status Act 49 of 2003

South African Schools Act 84 of 1996

Child Justice Act

Criminal Procedure Act 51 of 1977

Electoral Act 73 of 1998

Sexual Offences and Related Matters Amendment Act 32 of 2007

Marriage Act 25 of 1961

Recognition of Customary Marriages Act 120 of 1998

Prescription Act 68 of 1969

Choice on Termination of Pregnancy Act 92 of 1996

Also:

- the Basic Conditions of Employment Act of 1997, which makes it illegal to employ a child under 15;

- the Domestic Violence Act of 1998, which defines different forms of domestic violence and explains how a child can get a protection order against the abuser; and
- the Films and Publications Act of 1996, which protects children from exploitation in child pornography.

Please note

Scenarios in this article are fictitious, purely to illustrate the litany of laws and regulations that may be relevant in our day-to-day healthcare practice. No clinical advice or recommendations should be inferred.

Questions

Link Here: <https://forms.gle/EVqHyWLLW51dtjSL9>

1. What historical event primarily led to the development of children's rights?

- A. The Anglo Boer War
 - B. World War I
 - C. The Industrial Revolution
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2. Who founded Save the Children?

- A. Florence Nightingale
 - B. Eglantyne Jebb
 - C. Marie Curie
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3. In what year was the Declaration of the Rights of the Child adopted by the UN General Assembly?

- A. 1924
- B. 1959

C. 1989

4. According to the SA Constitution, a child is defined as:

- A. Under 21 years
 - B. Under 16 years
 - C. Under 18 years
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5. What is the most important in all matters concerning a child?

- A. Parental authority
 - B. Financial stability
 - C. Best interests of the child
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6. G can change her domicile when

- A. She is 18
 - B. She cannot change her domicile
 - C. If/ when she gets married
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7. A child under 18 can enter into a contract without assistance if:

- A. It includes obligations
 - B. It involves only acquiring rights
 - C. It involves payment
-

8. The POPI Act places the burden of proof for permission to process special personal information with the

- A. Parent
 - B. Practitioner who processes the information
 - C. Child
-

9. A child can validly refuse medical treatment if:

- A. They are over 18
 - B. Their parents agree
 - C. They are over 12 and sufficiently mature
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10. The right to refuse healthcare is partly based on:

- A. Contract law
 - B. Roman Dutch law
 - C: Constitutional bodily integrity
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11. From what age can a child open and operate a bank account independently?

- A. 16
 - B. 18
 - C. 21
-

12. At what age can a person apply for credit independently?

- A. 16
 - B. 18
 - C. 21
-

13. From what age can a person make a valid will?

- A. 16
 - B. 18
 - C. 21
-

14. At what age can a child consent to donate replaceable tissue (e.g. blood)?

- A. 12
 - B. 14
 - C. 16
-

15. A child under 18 can change their surname without parental consent if:

- A. They are employed
 - B. They are a student
 - C. They are married
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16. School attendance is compulsory until:

- A. Age 12
 - B. Age 15 or Grade 9
 - C. Age 18
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17. Under the Child Justice Act, a child under 12:

- A. Can be arrested
 - B. Has limited criminal capacity
 - C. Has no criminal capacity
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18. A child aged 12–14 is presumed to:

- A. Lack criminal capacity, but it can be rebutted during the legal process.

- B. Have full criminal capacity
 - C. Be legally an adult
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19. The general prescription period for most civil claims is:

- A. 1 year
 - B. 3 years
 - C. 5 years
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20: A child aged 12 and older may consent to medical treatment if:

- A. A parent is present
- B. They are married
- C. They are sufficiently mature and understand the implications

