

# Definition of family essay sample



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In a social context, the word “ family” can be used more flexibly. On the other hand, in a legal context, the word family would be harder to define. From the discussion below, we can see that the definition of family has changed to acknowledge changing social trends and attitudes to a certain extent.

In my opinion, family law should focus on the family structure as a whole. This is because family law concerns with mutual rights and obligations. However, it is difficult and in fact impossible for family law to be based only on the family as a whole, especially upon marital breakdown. For example, the law on divorce and domestic violence is self-centered. Nevertheless, the focus should be on the family as a whole as this protects the welfare of a child or children and allows a wider definition of family to be taken in order to reflect changing social trends and attitudes.

The best approach to be taken in order for the law to focus on the family structure as a whole would be to adopt the “ function-based definition”.<sup>1</sup> The focus of this approach would not be on technical formalities but rather more concerned with what people do. This gives the courts a wider discretion in defining what amounts to a family in light of changing social trends and attitudes.

However, this approach is not without flaws. The main problem would be to answer the question of: “ what should the functions of a family be?” This would mean that the functions of the idealized family would be adopted and again, this is rigid. Nevertheless, it is still more flexible than the idealized

definition or the formalist definition as the function based approach permits other family forms to be included within the definition.

Previously, in *Gammans v. Ekins*<sup>2</sup>, the Court of Appeal held that the defendant who was not married to the tenant could not be considered as a “member of the tenant’s family” in the “ordinary, popular sense of the word”. Meaning to say, marriage was seen to be the deciding factor of whether a family exists.

However, a wider approach was taken in *Fitzpatrick v. Sterling Housing Association*.<sup>3</sup> The House of Lords by a majority of three to two held that a gay couple could be deemed to be a family for the purposes of the Rent Act 1977. Lord Slynn suggested that the determining factors were “that there should be a degree of mutual inter-dependence, of sharing of lives, of caring and love, or commitment and support.”<sup>4</sup> The same rationale was adopted in *Mendoza v. Ghaidan*.<sup>5</sup>

From this, we can see that courts are adopting more of the function-based approach in defining family and although the decision in *Fitzpatrick* and *Mendoza* were made in the context of the Rent Act 1977, it does have a great impact in family law.

Nevertheless, it will be misleading to say that courts only take the function-based approach. For e. g. if a couple are married, they will be regarded as family even though they may not perform functions of a family. Also, even if the functions of a family are present, it does not guarantee that the courts will hold that a family exists. For e. g. in *Joram Developments Ltd v. Sharratt*<sup>6</sup>, although the functions of a family were being carried out, the

House of Lords was not willing to say that the man and woman were members of a family.

Based on the above discussion, we can see that the courts in defining “family”, adopts both the formalist approach and the function based approach. But evidently, they are moving more towards the function based approach and this is the right direction in which courts should be moving as this allows courts to focus on the family structure as a whole and consequently reflect changing social trends and attitudes.

Law and morality is always seen to be interconnected. However, they are not identical. What is legal may not be morally correct and what is moral may not be legal. For e. g. there could be unjust laws which are immoral. Telling lies to parents is immoral but it is definitely not enforced legally.

In my opinion, the law should focus on reflecting changing conceptions instead of focusing on dictating certain moral standards.

Firstly, this is because morality is generally a very grey area. What is seen to be immoral to one maybe perfectly moral to another. While on the other hand, laws should be clear and is in place for the benefit of the majority. Thus, if the majority of people perceives a certain matter to be acceptable, for example, transsexualism as a recognised medical disorder; and cohabitation as a norm, the law should in fact mirror that that perception. After all, laws are made by the people for the people.

Also, UK's family law is very much based on a set of assumptions “deeply mired in an ecclesiastical past”. Professor O'Donovan has criticized that if we

hold on to the traditional approach, it will result in “ the institutionalization of discrimination and justice”.<sup>7</sup> Thus, if the law continues to dictate certain moral standards, for e. g. the outdated perception that transsexualism being immoral<sup>8</sup>, transsexuals will definitely be discriminated by the law.

However, to a large extent, the law has indeed changed to acknowledge changing social trends and attitudes by reflecting changing conceptions instead of dictating certain moral standards. The passing of the Gender Recognition Act 2004<sup>9</sup> and the Civil Partnership Act 2004<sup>10</sup> clearly shows this.

In conclusion, we can see from the above discussion that the legal definition of family has to a large extent changed to acknowledge changing social trends and attitudes. Nevertheless, the definition of family will still have to evolve to protect the “ most vulnerable members”<sup>11</sup> of a family- the children. As Dame Elizabeth<sup>12</sup> has noted, it will not only depend on the “ justice system” but also on the “ wider community” in order for it to work.