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A (Child of the Family), Re [1998] 1 FLR 347 (CA(Eng))	5.28
A (children) (Conjoined Twins: Surgical Separation), Re [2001] Fam 147, [2000] 4 All ER 961, [2000] 3 FCR 577, [2001] 1 FLR 267 (CA)	5.64, 5.131
A (Conjoined Twins: Medical Treatment), Re [2001] 1 FLR 1	5.49
A (Contact: Separate Representation), Re [2001] 1 FLC 715 (CA)	5.545
A (Family Proceedings: Electronic Tagging), Re [2009] 2 FLR 891	5.348
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A (minors) (Wardship: Disclosure of Material), Re [1991] 2 FLR 473	5.97, 5.98
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A (Security for return to jurisdiction), Re [1999] 2 FLR 1	5.314
A (Temporary Removal from Jurisdiction), Re [2005] 1 FLR 639 (CA)	5.309, 5.317, 5.318
A and S (Children) v Lancashire County Council (Costs) (No 2) [2013] EWHC 851 (Fam), [2013] 2 FLR 1221	9.34
A B (an infant), Re [1949] 1 All ER 709	5.465
A Firm of Solicitors, Re [1984] HKC 346 (CFI)	9.47, 9.48
A Local Authority v A (No 2) [2011] 2 FLR 162	4.147
A Local Authority v P C (a child) (Identification: Restrictions on Publication) [2005] EWHC 1832 (Fam), [2005] EMLR 840	5.136
A Metropolitan Borough Council v D B [1997] 1 FLR 767	5.131
A Proposed Petition, Bowman v Bowman, Re [1949] P 353, [1949] 2 All ER 127 (CA)	3.201
A Solicitor (Paul Tse: No 1), Re [2006] 2 HKC 159	8.90
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A v A (Family: Unborn Child) [1974] Fam 6, [1974] 1 All ER 755, [1974] 2 WLR 106	4.440, 4.479, 5.29