UK Supreme Court

Debate Day

Information Pack

Contents

1. Introduction to the UK Supreme Court

2. Debate Day Topic

3. What is freedom of the press?

4. Privacy and the Law

5. Case examples

1. Introduction to the UK Supreme Court

The Supreme Court is the highest court in the United Kingdom. It is the final court of appeal for all civil cases in the UK (including Scotland) and for criminal cases in England, Wales, and Northern Ireland, excluding Scotland. Any decisions made in the Supreme Court sets the precedent for all of the lower courts.

The Supreme Court was established in the Constitutional Reform Act of 2005 which sought to establish a clear separation of powers between the executive, the legislature and the judiciary. It also aimed to create a more transparent and accessible judicial process.

It was in October 2009 that the judges or 'Law Lords' were finally moved out of the Appellate Committee of the House of Lords (the former highest court of appeal) and into the newly renovated Supreme Court which is situated on the other side of Parliament Square.

There are twelve Supreme Court justices, but they do not sit on cases at the same time. Each case is usually heard by a panel of five justices. This can be increased to seven or nine justices depending on the importance or complexity of the case. There are always an odd number of justices on a case to ensure that a majority decision can be reached. Very occasionally, eleven judges may sit on a case.

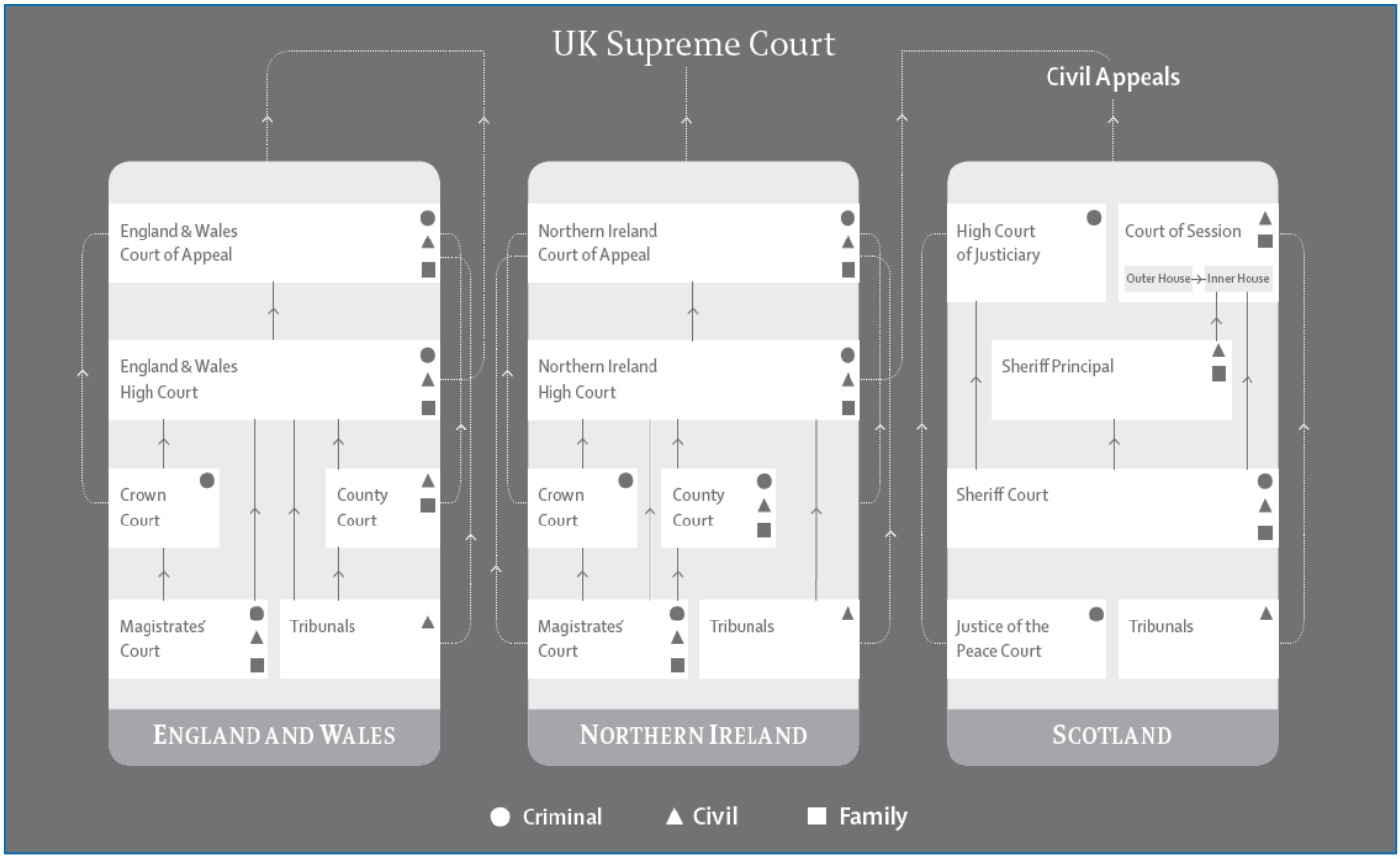
For example, during a during 'R (on the application of Miller and another (Respondents) v Secretary of State for Exiting the European Union (Appellant), a case about who had the authority to trigger Article 50, starting the process to leave the European Union, it was deemed so important that eleven judges heard the case.

Other cases have included: one about MP's expenses, one about whether letters that Prince Charles wrote to Government Departments should be published or even one about whether people should have the right to take your own life.

You can see more cases examples and the significance they have on society, on a series of videos specially made by the Royal Holloway University of London.

https://www.youtube.com/watch?v=yrLseT6RI&list=PLSegY__gUYIeCjbuO1dii9Oc4eCX2sx6D&index=2&t=0s

Hierarchy of the court system



This chart shows the route which many cases will take before they reach the Supreme Court.

A case will have travelled through at least three courts before being heard at the Supreme Court.

Between April 2018 and March 2019, the Supreme Court heard **91** cases in total.

For more information on the Supreme Court we recommend watching our introductory video by clicking the following link: https://www.youtube.com/user/UKSupremeCourt

2. Debate Day topic

Should freedom of the press override an individual's right to privacy?

Debate Rules

During the Debate Day, your group will be split into three teams: For, Against and Judges.

For:

Freedom of the press SHOULD override an individual's right to privacy.

Against:
Freedom of the press SHOULD NOT override an individual's right to privacy.

Judges

The Judges will listen to the arguments of both sides and can ask questions. They will then decide which side has given the strongest argument based on are how clear and concise the arguments were; how evidence has been used to support those arguments; whether the teams were able to answer the judges' questions and whether good teamwork was demonstrated overall.

Before the Debate Day, all teams should have a think about the case examples and the issues surrounding them in relation to this debate question.

3. What is freedom of the press?

Freedom of the press is the right to publish news, in newspapers, magazines or online outlets, without restriction of outside entities, such as a government or religious organisation subject to libel law.

'Whistle-blowers' are people who expose secretive information or activity that is deemed by them to be illegal or unethical within a private or public organization. Such individuals believe that the wider public should know about such information and to release data that public and private bodies think should be kept secret.

For example, whistleblowers have claimed that the American CIA and the British GCHQ (Government Communications Headquarters) have been collecting data from people's telephones, e-mails, Xbox Live devices and even World of Warcraft accounts.

In the United States, the term “fourth estate” is sometimes used to place the press alongside the three branches of government: legislative, executive and judicial. The “fourth estate” can refer to the watchdog role of the press, one that is important to a functioning democracy.

Bearing these ideas in mind, it is also worth considering when ‘freedom of the press’ and uncovering information in “the public interest” can expose people to embarrassment and humiliation, or worse.

For example, the paparazzi were accused of causing the crash that killed Princess Diana, by chasing her car just to get a good photograph.

Equally, in 2009, investigative journalists revealed the widespread misuse of Parliamentary expenses and allowances. These included: an MP claiming £13,00 for a mortgage he had already repaid, a Peer claiming £10,000 of taxpayers' money for repairs to window frames at his "second home", (an 18th-century mansion) and another MP claiming £30,000 for ‘gardening expenses’ (including a duck-house).

If those journalists had not sought these facts out under the Freedom of Information Act (see page 8), it is unlikely this scandal would have been uncovered.

On the other hand, journalists from the News International organisation were found guilty of hacking peoples' phones, (including that of murdered schoolgirl Milly Dowler), police bribery, and exercising improper influence in the pursuit of stories. This led to the closure of the newspaper the News of the World in 2011.

Back in the late 18th century, William Blackstone, a very influential judge and legal expert, wrote this:

"The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity."

Considering all the issues mentioned above, here are some questions to think about:

- Is freedom of the press important for democracy?
- Should some information be kept from the public?
- At what point does journalism become an intrusion of privacy?

4. Privacy and the law

Here are some of the laws that been established to try and balance privacy, freedom of expression and freedom of information.

Article 8

Article 8 of the European Convention on Human Rights provides a right to respect: "one's private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

Article 10

Article 10 of the European Convention on Human Rights provides the right to freedom of expression and information subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas.

Freedom of Information

The Freedom of Information Act 2000 creates a public "right of access" to information held by public authorities. These could include Government departments, the Houses of Parliament, local government or the regional assemblies, the NHS, the police or schools and colleges. A few government departments are specifically excluded, for example the intelligence services.

There are also further specific exemptions for government departments. These include:

- Information belonging to security services or relating to national security
- Information contained in court records
- Information covered by the Data Protection Act (1998)
- Information provided in confidence
- Information relating to the formation of Government policy
- Information that about communications with members of the Royal family

- Information covered by professional legal privilege
- Trade secrets
- Where release would prejudice law enforcement (e.g. prevention of crime)
- Where release would prejudice the effective conduct of public affairs; or inhibit the free and frank provision of advice or exchange of views
- Where release would endanger physical or mental health or endanger the safety of the individual

5. Case examples

Campbell (Appellant) vs MGN Limited

The appeal was heard at the House of Lords on 6th May 2004

This case involves Naomi Campbell, a highly successful British 'supermodel'. Scouted while window-shopping in Covent Garden, she appeared on the cover of *Elle* just before her 16th birthday and subsequently appeared on the catwalk for Yves St. Laurent, Versace and Dolce & Gabbana.

She had previously denied that she had ever taken drugs. In 1997 after an alleged drug overdose she had said: "I never take stimulants or tranquilisers". But in February 2001, the 'Daily Mirror' newspaper published a front-page article with the headline: "I am a drug addict" together with photographs of Campbell leaving a Narcotics Anonymous meeting.

Rather than challenge the disclosure of the fact she had been a drug addict, Campbell challenged the disclosure of information about the location of her Narcotics Anonymous meetings, and the pictures used.

Ms Campbell's lawyers argued that publication of the photographs would be a deterrent to her seeking further medical treatment - and that others would be discouraged from entering into medical treatment at the clinic knowing their image may appear in the press.

Furthermore, that there had been a breach of confidence, subject to the European Convention on Human Rights (specifically article 8) upholding the right to private and family life and this would require a court to recognise the private nature of the published information.

In the High Court, MGN (Mirror Group Newspapers) were found liable and Campbell was awarded £3,500 in damages. However, the Court of Appeal found that MGN was not liable; the photographs could be published since they were an integral part of the published story and also served to show her in a better light (that she was seeking help for her addiction). It was within a journalists' margin of appreciation to decide what information was 'integral' to the story and should be included.

Campbell appealed to the House of Lords, (the Supreme Court's predecessor as highest court of appeal). In considering their judgment, the House of Lords judges referred to an earlier case, *A vs B Plc*, in which a Premiership footballer sought an injunction against a Sunday newspaper, to stop them publication of his extra-marital affair. In this case a principle was established that it was not for the press to justify that there was public interest in a story, but that an appellant had to justify why freedom of the press should be restricted.

The House of Lords held by a majority that MGN was liable and that the photograph added something of 'real significance'. The court engaged in a balancing test. Did Ms Campbell have an expectation of privacy, (Article. 8)? And if so, would this result in a significant inference with freedom of expression (Article.10)?

- Does a celebrity have more or less right to privacy than any other individual? *More* because the nature of what they do puts them more in the public eye. Or *less* because that publicity is what they deliberately look for?

- Does the fact that Naomi Campbell originally denied that she had taken drugs at all, make the *Mirror* story of greater public interest?

Khuja (Appellant) v Times Newspapers Limited and others (Respondents) (formerly knowns as PNM (Appellant) v Times Newspapers Limited and others (Respondents)

The appeal was heard at the UK Supreme Court on 17th & 18th January 2017

In March 2012 several men were arrested in the Oxford area, as part of Operation Bullfinch aimed at breaking up organised child sex grooming gangs and prostitution.

One of those arrested was Tariq Khuja, a very successful property owner. The reason for his arrest was that one of the victims had told the police that she had been abused by a man with the same, very common, first name.

She failed, however, to pick him out at an identity parade. He was later told by police that he would be released from arrest without charge, but that the case would be kept under review. That remained the position.

The Times and the *Oxford Mail* wish to publish information identifying the appellant as someone who had been arrested, bailed, his passport impounded and then de-arrested in connection with Operation Bullfinch, or as someone suspected by the police of being involved in sexual offences against children.

Mr Khuja sought an injunction against publication of any information which might identify him until such time as he was charged with an offence. The magistrates' court granted this injunction. At the criminal trial the judge made a similar order.

During the trial, Mr Khuja was referred to several times, in a police officer's evidence of his attendance at an identity parade and in the closing speeches of prosecuting and defence counsel.

Mr Khuja was released without charge and the newspapers then applied to lift the order on the ground that there were now no "pending or imminent" proceedings which might be prejudiced by publication.

The matter moved to the High Court where Mr Khuja asked for the injunction to be continued on the basis that it was necessary to protect him against the misuse of private information and the infringement of his right to private and family life protected by article 8 of the European Convention on Human Rights (ECHR).

The judge dismissed the application, and the Court of Appeal dismissed the appellant's subsequent appeal. It was subsequently heard at the UK Supreme Court.

The UKSC also dismissed the appeal, (by a majority of 5 to 2).

Linking Mr Khuja's name with the trial (even when he was found innocent) was not thought to be breach of his privacy and so could be published, as, although some members of the public could equate suspicion with guilt, most would not.

Secondly, on the issue of article 8, the UKSC ruled that Mr Khuja could not expect privacy from a public trial. The impact on his family life was "'indirect and incidental'" and "'neither he nor his family participated in any capacity at trial, and nothing that was said at trial related to his "family.'"

- What are the possible consequences if the press are <u>not</u> allowed to report court proceedings?

- What are the possible consequences of someone's name being linked to a criminal trial, even if they are declared innocent?

R (on the application of Evans) and another (Respondents) v Attorney General (Appellant):

Under the Freedom of Information (FOI) Act of 2000, members of the public can request to see certain documents held by many public bodies. The Environmental Information Regulations of 2004 (EIR 2004) also allow members of the public to have access to information from public bodies about environmental issues. There are some exemptions to this, for example, if the release of the information might threaten public security.

In 2005, Mr Evans, a *Guardian* journalist, submitted requests under both FOIA 2000 and EIR 2004 to see papers relating to correspondence between HRH Prince Charles and Government ministers. These became known as the 'Black Spider' papers (because of Prince Charles' handwriting).

Mr Evans felt it was in the public interest that these papers be made available, to ensure that the future King was not influencing Government policy.

The request was refused, and so Mr Evans appealed to the Information Commissioner, who also refused the request as it was considered to be private correspondence, which falls under an FOI exemption.

Mr Evans then appealed to an Information Tribunal and later to an Upper Tribunal, which ruled that many of the letters should be disclosed. However, the Government's chief legal adviser, the Attorney General, refused to do so.

Mr Evans issued proceedings challenging this. The Divisional Court dismissed his claim. However, the Court of Appeal allowed his appeal. The Attorney General appealed to the Supreme Court.

By a majority of 5 to 2, the UKSC found for Mr Evans. They concluded that the FOI Act does not permit the Attorney General to override a decision of a judicial tribunal or court because he, a member of the executive, takes a different view from that taken by that tribunal or court.

This would be unique in the laws of the United Kingdom and would cut across two constitutional principles which are fundamental components of the rule of law, namely that a decision of a court is binding between the parties and cannot be set aside, and that decisions and actions of the executive are reviewable by the courts, and not vice versa. This is known as 'separation of powers'.

- Should the Royal Family come under the rule of law?

- How important is the use of freedom of information in supporting separation of powers?