

UK Supreme Court Debate Day

Information Pack



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1. 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 is also the final court of appeal for devolution issues, where its role would be to see whether Scotland, Northern Ireland, and Wales are acting within their powers. These cases used to be heard by the Judicial Committee of the Privy Council.

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.

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.

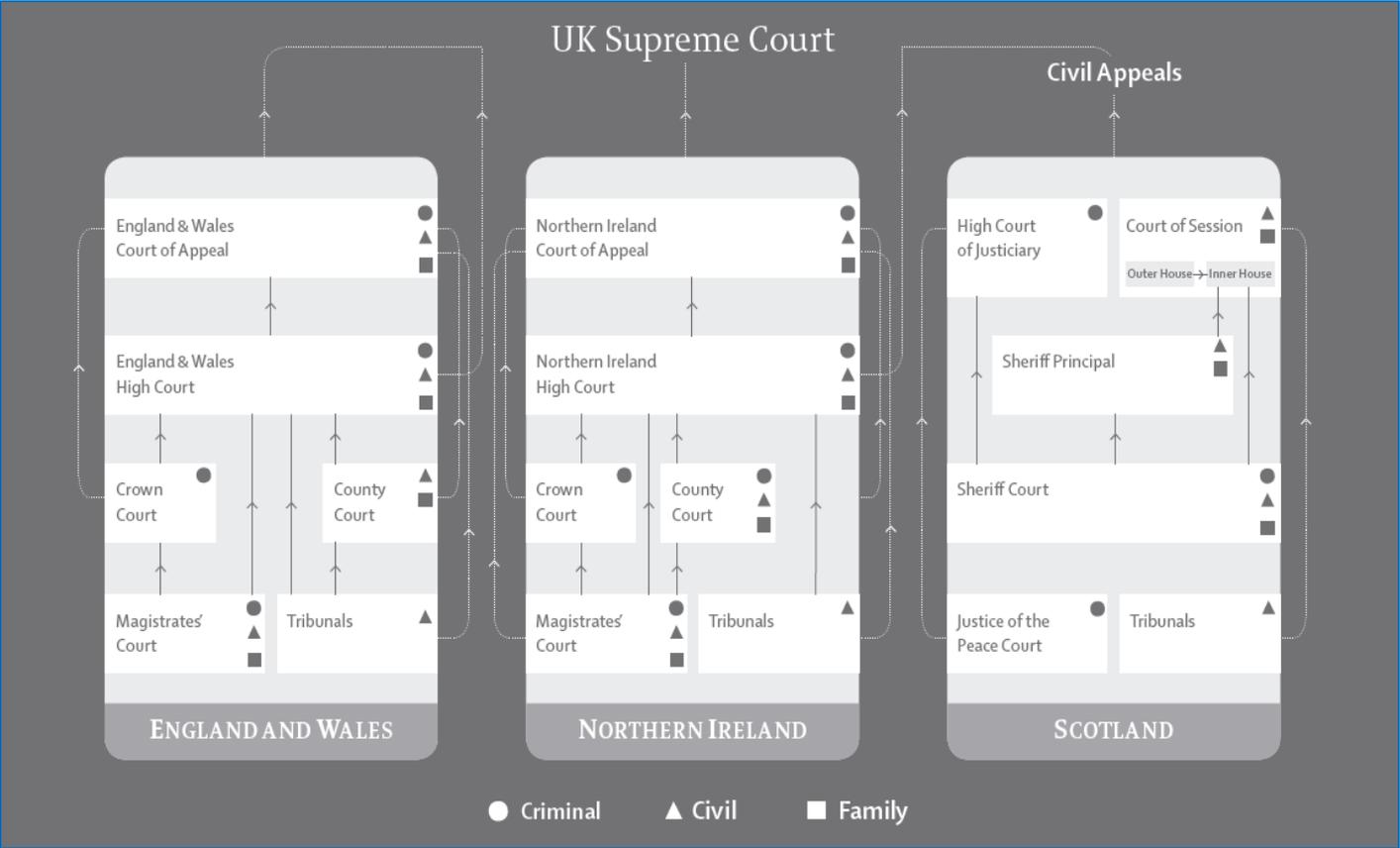
For example, during a during 'R (on the application of Miller and another (Respondents) v Secretary of State for Exiting the European Union (Appellant), a case about who had the authority to trigger Article 50, starting the process to leave the European Union, it was deemed so important that eleven judges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

Joint Enterprise

Joint Enterprise is a doctrine enshrined in English common law. It is a law that has been used and evolved over the centuries. It reinforces the notion that if you are seen to be involved in the commission of a crime you could be seen to be equally as guilty as the person who has committed it. And so, if your knowledge, your presence or your actions indicate that you have played a part in a crime under 'joint enterprise' you could be convicted of the same crime as the principal offender.

Three types of Joint Enterprise:

- 1) **Where two or more people join in committing a single crime, in circumstances where they are, in effect, all joint principals**

Example

P1 and P2 go on a shoplifting spree together, both taking goods out of shops without payment. They are joint principals.

- 2) **Where D assists or encourages P to commit a single crime**

Example

D provides P with a weapon so that P can use it in a robbery. P is liable as a principal; D is liable as an accomplice.

- 3) **Where P and D participate together in one crime (Crime A) and in the course of it P commits a second crime (crime B) which D had foreseen he might commit.**

Example

D and P carry out a burglary (offence A). P acts as principal, entering the premises and stealing. D assists or encourages P by acting as a lookout. However, in the course of the burglary, P kills householder V. P is liable for murder of V as a principal. D may also be liable for murder, as a secondary party, if D foresaw when participating in the burglary that P might commit a criminal act (use unlawful force) with intent to kill or do serious bodily harm.

3. Background Information of UKSC Joint Enterprise Cases

Case Name: R v Gnango (Respondent) **Date of Hearing:** July 2011.

Background Information and Case Details:

On 2 October 2007, a 26-year-old Polish care worker, Magda Pniewska, was walking home from work through a car park in New Cross, South London when she was shot and killed after being caught in an exchange of gunfire. The gun fight was between two gunmen, 'B' and Mr Gnango, neither of whom had been aiming at Ms Pniewska, but at each other.



Scientific evidence showed that the bullet which killed Ms Pniewska had come from B's gun and not Mr Gnango's. But B was never caught and so could not be charged. Mr Gnango however was charged with murder under the 'joint enterprise' doctrine.

Mr Gnango was convicted of murder following a trial at the

Old Bailey (criminal high court) on the grounds of 'joint enterprise'. He was aged 17 at the time. He later appealed the ruling at the Court of Appeal which decided to overturn his conviction.

The Court of Appeal held that the facts given at the Old Bailey could not add up to 'joint enterprise' liability for murder.

The Crown Prosecution Service (CPS) appealed to the Supreme Court with the aim to restore Gnango's guilty conviction.

The Supreme Court in considering the appeal by the CPS, was asked to address the following question: "If D1 and D2 voluntarily engage in fighting each other, each intending to kill or cause grievous bodily harm to the other and each foreseeing that the other has the reciprocal intention, and if D1 mistakenly kills V in the course of the fight, in what circumstances, if any, is D2 guilty of the offence of murdering V?"

The Supreme Court ruled by a 6-1 majority in the case of R v Gnango that Mr Gnango's conviction for murder should be restored.

The Supreme Court agreed with the decision given by the trial judge in the Old Bailey for the following reasons:

- The trial judge (at the Old Bailey) had directed the jury that, in order to convict, they had to be satisfied that there was a plan or an agreement to have a 'shoot-out', whether this was made beforehand or on the spur of the moment (when Gnango and B saw and fired at each other in the car park.)
- The jury's verdict indicates that they were satisfied that there was a planned shoot out.



- The Supreme Court stated that Gnango and B had chosen to take part in a gunfight in a public place, each intending to kill or cause serious injury to the other, in circumstances where there was a foreseeable risk that this result would be suffered by an innocent bystander.
- It was a matter of fortuity which of the two fired what proved to be the fatal shot.

R v Gnango's journey through the courts



St Albans Crown Court

Gnango initially convicted



Old Bailey (Central Criminal Court)

Trial by jury: Gnango found guilty of murder and sentenced.



Court of Appeal

Appeal judges overturn his conviction.



UK Supreme Court

Reinstates Gnango's conviction.

UK Supreme Court Case 2.

Case Name: R v Jogee (Appellant)

Date of Hearing: October 2015

Background Information and Case Details:

On the 9th June 2011, around midnight, Jogee along with his friend Hirsi visited Naomi Reid at her home in Leicester. They had spent the previous evening at various places, having consumed drugs and alcohol they had become increasingly aggressive and intoxicated.

During their visit Jogee picked up a knife from the kitchen and spoke about how they should go and stab another man that he had a disagreement with that evening. After being talked down, Jogee returned the knife. He and Hirsi left Miss Reid's house after she asked them to leave before her boyfriend Mr Fyfe arrived home.

At around 2.23am both Jogee and Hirsi returned to Naomi Reid's house. Hirsi entered the premise while Jogee stayed outside by the front door, and is alleged to have also caused damage to Mr Fyfe's car.

There were heated exchanges between Hirsi and Mr Fyfe, after which Mr Fyfe went upstairs. In the meantime, Hirsi entered the kitchen and grabbed a knife. He and Mr Fyfe continued their exchange; Mr Fyfe insisted that both Hirsi and Jogee leave. Miss Reid alleges that despite this, whilst outside the property Jogee threatened to hit Mr Fyfe over the head with a brandy bottle, he also shouted to Hirsi to "do something" to Mr Fyfe, encouraging him to harm Mr Fyfe.

Hirsi stabbed Mr Fyfe with the kitchen knife. His wound proved to be fatal. Both Hirsi and Jogee were found guilty of Mr Fyfe's murder under the doctrine of joint enterprise, and sentenced to life imprisonment at Nottingham Crown Court. Jogee appealed against his conviction of murder, on the grounds that foresight of the possibility that Hirsi would use the kitchen knife with the intention of committing, at least, serious bodily harm to Mr Fyfe, was not enough to warrant a conviction for murder. He lost his case at both the High Court. The Court of Appeal also dismissed his appeal despite allowing his sentence to be reduced to 18 years. Jogee then applied to the Supreme Court, and his case was heard in October 2015.

Previously the law had said that Jogee was guilty of murder on grounds of "foresight" i.e. having foreseen that his accomplice could have committed harm to the extent of murder. Jogee's lawyers successfully argued that, for a defendant to be found guilty of murder, the prosecution must prove a "mental element of intent". Jogee's case was sent back to the Crown Court for reconsideration. He was later convicted and sentenced to the lesser crime of manslaughter.

4. Further Case Examples

A Common Purpose: Swindall and Osborne (1846)

In English law, the doctrine of joint enterprise derives from *R v Swindall and Osborne* (1846) where two cart drivers engaged in a race. One of them ran down and killed a pedestrian. It was not known which one had driven the fatal cart, but since both were equally encouraging each other in the race, it was irrelevant which of them had actually struck the man, so both were held jointly liable.

Thus, the parties must share a common purpose and make it clear to each other by their actions that they are acting on their common intention so that each member of the group assumes responsibility for the actions of other members in that group.



Jointly Responsible?

The joint enterprise doctrine was used in 1952 to convict Derek Bentley for the shooting of a police officer. The actual murder was committed by an accomplice, Christopher Craig, who escaped the death penalty because he was 16 at the time.

Bentley was convicted after he said the words "let him have it" which formed a key part of the evidence of joint enterprise, holding him jointly responsible for the murder.

He was hanged for the crime in 1953 despite protests that his mental age was 11, a fact which the jury was not told.

In a normal murder charge the prosecution would have to prove that the defendant either intended to kill or cause serious bodily harm. But the law of joint enterprise is much wider and effectively allows someone to be prosecuted for murder if they foresaw that another member of the group might kill or inflict serious harm.

Some have taken the view that this sets the bar too low for the prosecution, and in some cases, could lead to people on the fringes of a group being prosecuted when they are too morally remote from the murder to be charged with it.

5. Debate Topic

Debate Question:



Is it fair that you could be charged with murder if your presence, knowledge or actions resulted in someone being killed, even if you did not commit the fatal act yourself?

You must form an argument based on the UK Supreme Court cases provided and the wider argument of Joint Enterprise.

Before you come to the Debate Day, please have a think about the different issues which are linked to this debate question:

- Whether the doctrine of Joint Enterprise is a good deterrent to serious crime
- Is Joint Enterprise a good way to ensure that guilty parties do not escape conviction?
- Whether the criteria for Joint Enterprise should be defined differently
- Whether it is always possible to determine the intentions of an individual involved in a crime (*mens rea*: mental intent and *actus rea*: physical actions)
- Some say the doctrine of Joint Enterprise may result in the conviction of innocent people or people who were simply in the wrong place at the wrong time, is it therefore reliable?



6. Debate Rules

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

All groups should prepare for the debate with the intention of debating the fairness of the Joint Enterprise rules, referring to Supreme Court cases as well as looking at the wider debate.

For:

IT IS FAIR that you could be charged with murder if your presence, knowledge or actions resulted in someone being killed, even if you did not commit the fatal act yourself.

Against:

IT IS NOT FAIR that you could be charged with murder if your presence, knowledge or actions resulted in someone being killed, even if you did not commit the fatal act yourself.

The Judges

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

Before the Debate Day, all the teams should read and consider the case examples, the issues surrounding them in relation to this debate question.

Timetable for Debate
50 min debate preparation
Team A (for): 10 min
Team B (against): 10 min
Break 4 minutes
Team A: 3-minute summary
Team B: 3-minute summary
Judges 10 min to consider and deliver judgment

7. Useful Links:

For more information about the UKSC Cases:

<https://www.supremecourt.uk/cases/uksc-2015-0015.html>

https://www.supremecourt.uk/decided-cases/docs/UKSC_2010_0165_PressSummary.pdf

Background news articles:

Joint enterprise: What is it and should it be changed?

<http://www.bbc.co.uk/newsbeat/28198641>

Articles on Joint Enterprise Cases:

<http://www.theguardian.com/commentisfree/2015/jul/14/kill-guilty-murder-supreme-court-law-joint-enterprise-offence>

<http://www.theguardian.com/law/2014/apr/01/joint-enterprise-law-controversy-homicide>

<http://www.independent.co.uk/news/uk/crime/jordan-cunliffe-they-gave-no-credit-to-his-disability-they-said-if-he-can-kick-a-ball-he-can-kill-a-10039791.html>

<http://www.theguardian.com/theguardian/1953/jan/28/fromthearchive>

<http://www.theguardian.com/law/2011/jul/25/joint-enterprise-supreme-court-gnango>

<http://www.theguardian.com/law/2015/oct/27/man-challenges-joint-enterprise-conviction-in-supreme-court>

<http://www.theguardian.com/commentisfree/2015/jul/14/kill-guilty-murder-supreme-court-law-joint-enterprise-offence>