

UK Supreme Court



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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.

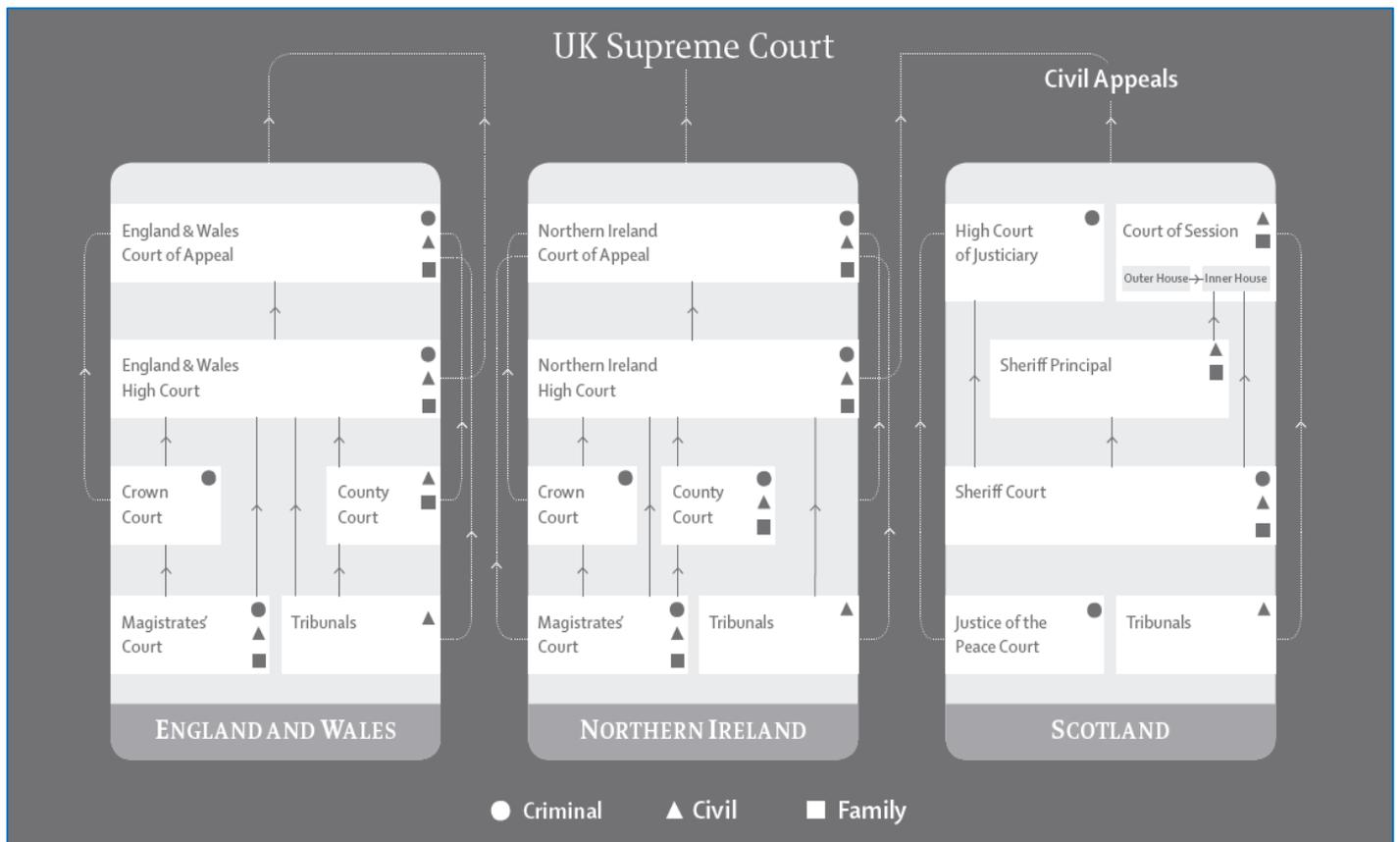
There are twelve Supreme Court justices, but they do not sit on cases at the same time. Each case is usually heard by a panel of five justices. This can be increased to seven or nine justices depending on the importance or complexity of the case. There are always an odd number of justices on a case to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

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. Cases Examples

Case 1: Freezing of Terror Suspects' Assets

UK Supreme Court Case Name:

H M Treasury (Respondent) v Mohammed Jabar Ahmed and others (Appellants)
H M Treasury (Respondent) v Mohammed al-Ghabra (FC) (Appellant)
R (on application of Hani El Sayed Sabaei Youssef) v H M Treasury (Appellant)

These joint appeals were heard at the Supreme Court in October 2009 and the judgment was given in January 2010.

Background Information and Case Details:

This case was the very first case heard by the UK Supreme Court in October 2009. It is particularly important as it is of constitutional importance as these appeals question the lawfulness of asset-freezing powers adopted by the government against terror suspects without parliamentary approval.

In response to a rise of international terror related incidents such as the 9/11 attacks and the Bali bombings, security was heightened in many countries throughout the world. The **UN Security Council** (UNSC) in particular passed resolutions which required member states to take steps to ensure the freezing of assets relating to terrorists and suspected terrorists.

The **UN Security Council** subsequently created a 'consolidated' list which outlined the details of individuals whose assets could/should be frozen. This list was compiled following security intelligence and previous criminal convictions. The individuals who were placed on the consolidated list were not informed of the reasons for their inclusion, nor were they granted the right to challenge such a decision before a judge.

The **1946 UN Act** authorises **Orders in Council** (executive orders) to use special powers only when 'necessary and expedient.' This asset freezing resolution therefore did not require Parliamentary approval or court trial and judgment, as decisions can be made directly by the executive, in this case HM Treasury.

Accordingly, the **Terrorism Order** and the **Al-Qaida & Taliban Order** were created by HM Treasury, which stipulated that individuals' assets can be frozen on the grounds of '**reasonable suspicion.**' Both Acts were made by HM Treasury according to **Section 1 of the 1946 UN Act**, this consequently brought the **UN Security Council Resolutions** (UNSCR) into effect in the UK.

Mohammed Jabar Ahmed, Hani el-Sayed Sabaei Youssef, Mohammed al-Ghabra, Mohammed Azmir Khan and Michael Marteen had been declared as 'designated persons' under the **Terrorism Order** and so had their assets frozen.

The individuals had their assets indefinitely frozen under an order which prohibited them from receiving or gaining any form of property, funds or economic resources without the authorisation of the executive.

The appellants were permitted to receive support which was provided by their wives and relatives. This was by way of a licence which was issued from the Treasury and allowed them to access welfare benefits (the family's sole source of support) in addition to a limit of £10 a week in cash. Spending was restricted only to what the Treasury deemed to be 'basic expenses.' All expenditure needed to be fully accounted for to the Treasury, including expenditure by the children.

This meant that appellants had to undergo daily negotiations with the Treasury over whether they could undertake basic tasks and activities. 'The appellants argue that the freezing orders violate their **right to respect for family life** under **article 8** of the Convention, their **peaceful enjoyment of their possessions** under article 1 of the First Protocol and their **right to a fair trial** under **article 6.**'

The High Court ruled in favour of the men, where the Judge declared that the Treasury Orders as 'unfair' and a breach of fundamental human rights. The Judge also suggested that the making of the Orders to implement the **UN Security Council Resolutions** had bypassed Parliament and therefore was not lawful.

Following this ruling HM Treasury appealed to the Court of Appeal, where the appeal judges allowed the appeal and partly reversed the High Court's decision, with the majority ruling that the Orders and the creation of such Orders by the Executive (without having been debated by Parliament) was lawful, but that the individuals were entitled to seek judicial review.

Subsequently, the five men then appealed to the Supreme Court of the United Kingdom, their case was the first to be heard at the Supreme Court following its official opening in October 2009.

The case was heard by a panel of seven Supreme Court Justices where both the **Terrorism Order** and the **Al-Qaida & Taliban Order** came under scrutiny concerning their legality. The case considered whether the orders went beyond what was required by the **UN Security Council Resolutions**, in addition to placing severe limitations on the ability of an individual whose property had been frozen, which could not only affect their freedom of movement, but their liberty regarding both their private and their family life in addition to their families.

Here are some issues for you to consider when formulating your argument either for or against the debate question:

- Whether the Orders created by the Treasury were unlawful because they sought to restrict fundamental human rights without approval from Parliament.
- In times of crisis should the government be able to freeze the assets of individuals on the grounds of **reasonable suspicion**, even if it does infringe upon their liberties?
- What could be considered 'reasonable suspicion' and where should the line be drawn?
- Is it fair to deprive those on the 'Consolidated List' of any right of access to a court, to challenge the decision to freeze their assets?
- Whether the implementation of these Orders is a proportionate measure in seeking to combat or prevent terrorism.

- Is it possible to strike a balance between combating terrorism and infringing the human rights of individuals through implementing such orders?



Case 2:

Schedule 7, Terrorism Act 2000 – What is it?

Schedule 7 of the Terrorism Act 2000 allows examining officers (police, immigration or custom officers) to stop and search individuals at airports, shipping ports or international rail terminals, for the purpose of determining whether an individual is or has been concerned in the commission, preparation or instigation of acts of terrorism.

Officers are permitted to stop an individual even if there is “**no reasonable suspicion**” that someone is involved with terrorism before they are stopped.

They are also entitled to request the production of documents, the copying and retention of materials and to search and question individuals. They can hold an individual for a maximum of 6 hours (previously 9 hours).

Beghal (Appellant) v Director of Public Prosecutions (Respondent)

This case was heard at the Supreme Court in November 2014 and the judgment was given in July 2015.

Background information and Case Details:

Sylvie Beghal (the Appellant) is a French national and also a resident of the UK. She is the wife of a man who is in custody in France in relation to terrorist offences. Upon her arrival at East Midlands Airport having returned from her trip to France, Mrs Beghal was stopped by UK Border Force officials.

She was stopped and searched by police officers from Leicestershire Constabulary who proceeded to conduct an ‘examination’ under Schedule 7 of the **Terrorism Act 2000**.

Upon being stopped, Mrs Beghal was not formally detained, arrested or suspected of being a terrorist but was told by the police that they needed to speak to her to establish whether she was involved in terrorist acts. Subsequently, Mrs Beghal requested a lawyer, however the officers insisted that they would not delay their examination pending the arrival of her lawyer. She was however allowed to make a phone call to her lawyer at the time.

Upon being interrogated, Mrs Beghal refused to answer most of the questions and was consequently charged with wilful failure to comply with the requirement to answer questions. She later pleaded guilty to this offence and received a conditional discharge.

Mrs Beghal then appealed to the High Court arguing that the Schedule 7 powers breached her human rights citing Article 5 (right to liberty), Article 6 (privilege against self-incrimination) and Article 8 (right to respect for private and family life) of the **European Convention of Human Rights (ECHR)**. After considering both the compatibility of Schedule 7 with the ECHR and whether the powers of **Schedule 7** are a proportionate response to pre-empting terrorism the judges ruled that **Schedule 7** of the **Terrorism Act 2000** did not violate her human rights and she therefore lost her case at the High Court. Mrs Beghal then appealed to the Supreme Court.

Here are some issues for you to consider when formulating your argument either for or against the debate question:

- Whether the examination of an individual pursuant under Schedule 7 is compatible with Mrs Beghal’s human rights under the **European Convention of Human Rights (ECHR)**?
- Where is the balance between the rights of the individual and the public interest in safeguarding the country from terrorism?
- Given that an individual can be stopped without reasonable suspicion – what potential challenges does this pose?
- Is it possible to preserve individual liberties whilst retaining a firm grasp on upholding national security?



3. Magna Carta: What is it?

Magna Carta (*Latin for 'the Great Charter'*) is one of the most celebrated documents of all time. It is recognised as a 'charter of liberties' which sets forth the rights and freedoms of individuals, a concept that has evolved over the centuries and helped form the basis of many constitutions throughout the world.



Magna Carta was originally formed as a list of articles of rights in 1215, a peace treaty, designed to bring peace and assurance to the angry barons who were unhappy with King John and how he was running the country at the time. It was a document that emphasised that even the King was not above the law and placed limitations on his power. As the country was on the brink of civil war King John agreed to the Barons demands where he confirmed the Charter of Liberties in Runnymede on 15th June 1215.

Magna Carta was revised and reissued on several occasions throughout the 13th Century and so there are many original documents preserved around the globe.

Magna Carta has influenced the creation of many constitutions and its ideas and impact can be seen through many legal instruments such as the Bill of Rights 1689, the US Constitution and the Universal Declaration of Human Rights (which Eleanor Roosevelt called "a Magna Carta for all mankind").



However, even with the establishment of the US Bill of Rights and many US states incorporating the text of Magna Carta in their **statute books**, rights were not guaranteed to everyone. Both Native Americans and African Slaves remained ‘unfree.’ It was only until after the civil war that the US constitution was amended to grant rights to slaves and former slaves that had been granted to everyone else.

Contrary to the principles of Magna Carta, there have also been occasions when such rules and laws have been suspended during times of crisis. An example of this is the Internment period, put in place during “the troubles” in Northern Ireland between 1970s – 90s. The government used the Special Powers Act to introduce detention of individuals without trial for those suspected of being involved in violence.

Magna Carta highlights many liberties such as religious freedom, limits on taxation, rules on inheritance, and arguably one of the more significant freedoms - a right to fair and equal justice. Whilst Magna Carta contains 63 clauses, there are in fact only a select few which are still in force today on the UK statute book:

**Clause 1:
Protecting rights and liberties of the English Church**

**Clause 13:
The right to enjoy the liberties and free customs of the City of
London**

**Clause 39 & 40:
Anyone accused of a crime has the right to be tried by his equals
or by the law of the land.**

Debate Rules

In times of a heightened risk of violence and rise in terrorism, global security has become an issue of concern.

In your debate you will be focusing on cases which highlight various new laws that have been implemented due to terrorism threats and heightened security.

You will consider whether the rights of the affected individuals in these cases have been compromised, linking your argument to case examples included in this pack.

Your debate will specifically focus on the principles raised in clauses 39 and 40 of Magna Carta.

Debate Question:

In times of crisis, should the principles raised in clauses 39 and 40 of the Magna Carta be suspended in order to protect the state?

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



For:

In times of crisis, these principles **SHOULD** be suspended in order to protect the state?

Against:

Clause 39:

“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.”

Clause 40:

“To no one will we sell, to no one deny or delay right or justice.”

In times of crisis, these principles **SHOULD NOT** be suspended in order to protect the state?

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 For: 10 min

Team Against: 10 min

Break 4 minutes

Team For: 3 minute summary

Team Against: 3 minute summary

Judges 10 min to consider and deliver judgment

4. Useful Links:

Freezing Assets:

<http://www.theguardian.com/uk/2010/jan/27/terror-suspect-asset-freezing-illegal>

<http://www.independent.co.uk/news/uk/home-news/new-law-pledge-after-terror-assets-freeze-overturned-1880347.html>

<http://news.bbc.co.uk/1/hi/uk/7364549.stm>

<http://news.bbc.co.uk/1/hi/uk/8483266.stm>

https://www.supremecourt.uk/decided-cases/docs/UKSC_2009_0016_PressSummary.pdf

https://www.supremecourt.uk/decided-cases/docs/UKSC_2009_0015_Judgment.pdf

Beghal

<http://www.bbc.co.uk/news/uk-33619684>

<http://www.theguardian.com/law/2013/aug/28/human-rights-appeal-airport-detention>

<https://www.supremecourt.uk/cases/docs/uksc-2013-0243-press-summary.pdf>

<https://www.supremecourt.uk/cases/docs/uksc-2013-0243-judgment.pdf>

Other links:

<http://www.bbc.co.uk/news/uk-23757133>