



Human rights: Some definitions and quotations

“(Human rights provide) ...an ethical language we can all recognise and sign up to...a language which doesn't belong to any particular group or creed but to all of us. One that is based on the principles of common humanity”

Jack Straw MP, as Justice Secretary in 1999.

Human rights: Rights and freedom to which every human being is entitled. Protection against breaches of these rights by a state (including the state of which the victim is a national) may in some cases be enforced in international law. It is sometimes suggested that human rights (or some of them) are so fundamental that they form part of natural law, but most of them are best regarded as forming part of treaty law.

Oxford Dictionary of Law, 2009, Oxford University Press.

The rule of law requires that the law afford adequate protection of fundamental **human rights**. It is a good start for public authorities to observe the letter of the law, but not enough if the law within a country does not protect what are there regarded as the basic entitlements of a human being.

Lord Bingham (former Senior Law Lord), The Rule of Law, 2010, Penguin.

The basic rights and freedoms that all humans should be guaranteed, such as the right to life and liberty, freedom of thought and expression, and equality before the law.

Wiktionary, a wiki –based open content dictionary [en.wiktionary.org/wiki/human rights](http://en.wiktionary.org/wiki/human_rights), accessed 30/12/10.

The term **human rights** contains many meanings...To the philosopher it is about the essential qualities of the human that lead us to an understanding of our duties towards others; to the specialist in international relations, it connotes a force in the management of relations between states; while to the political scientists, human rights are a tool in the construction of a liberal community.

The New Oxford Companion to Law, 2008, Oxford University Press.



The Human Rights Act

The Human Rights Act came into force in the UK on 2nd October 2000.

The Act places all public authorities in the UK (including the NHS and central and local government) under a duty to respect the rights contained in the European Convention of Human Rights in respect of all public functions.

The Human Rights Act protects everyone in the UK without exception.

There are 16 rights contained in the Human Rights Act:

- The right to life
- The right not to be tortured or treated in an inhuman or degrading way
- The right to be free from slavery or forced labour
- The right to liberty
- The right to a fair trial
- The right to not to be punished except in accordance with law
- The right to respect for private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right to freedom of expression
- The right to freedom of assembly and association
- The right to marry and found a family
- The right not to be discriminated against in relation to any of the rights contained in the European Convention on Human Rights
- The right to peaceful enjoyment of possessions
- The right to education
- The right to free elections
- Abolition of the death penalty (abolished in the UK in the 1960s).





The Supreme Court and the European Convention on Human Rights

Before the Human Rights Act was passed by Parliament in 1998, it was not possible for an individual in the UK to challenge a decision of a public authority on the ground that it violated his or her rights under the European Convention of Human Rights (ECHR), within the courts of the UK. Individuals instead had to take their complaint directly to the European Court of Human Rights in Strasbourg (ECtHR).



European Court of Human Rights, Strasbourg

The Human Rights Bill (before it was passed by Parliament) was strongly promoted by the then Prime Minister, Tony Blair:

“The Bill... will give people in the United Kingdom opportunities to enforce their rights under the European Convention in British courts rather than having to incur the cost and delay of taking a case to the European Human Rights Commission and Court in Strasbourg. It will enhance the awareness of human rights in our society. And it stands alongside our decision to put the promotion of human rights at the forefront of our foreign policy.”

(Tony Blair in preface to Rights Brought Home; the White Paper that accompanied the introduction of the Human Rights Bill.)

Once the Act came into force 2 October 2000, individuals could claim a remedy for breaches of their Convention rights in the UK courts. An individual who thinks that his or her Convention rights have not been respected by a decision of a UK court may still bring a claim before the ECtHR, but they must first try their appeal in the UK courts

Compatibility of legislation and government action with ECHR

It is the duty of all such courts, including the UK Supreme Court, to interpret all existing legislation so that it is compatible with the ECHR so far as it is possible to do so. If the court decides it is not possible to interpret legislation so that it is compatible with the Convention, it will issue what is known as a ‘declaration of incompatibility’.

Although a declaration of incompatibility does not place any legal obligation on the government to amend or repeal legislation, it sends a clear message to legislators that they should change the law to make it compatible with the human rights set out in that Convention.

Precedent and relationship between the courts

In giving effect to rights contained in the ECHR, the Court must take account of any decision of the ECtHR in Strasbourg. Lord Bingham, when sitting as a Law Lord, ruled that no national court should “without strong reason dilute or weaken the effect of the Strasbourg case law” (*R (Ullah) v Special Adjudicator* [2004] UKHL 26). The UKSC looks at ECtHR decisions and precedents on human rights law rather than just UK precedents.

It is therefore somewhat inevitable that there is an ongoing debate about the precise extent to which the UK Supreme Court (and other courts in the UK) should “take account” of such rulings when reaching the own judgments.

In rare circumstances, the Supreme Court effectively invited the Strasbourg court to ‘think again’. For example, in 2009 the Court declined to follow the decision of the lower chamber of the ECtHR in *Al-Khawaja v United Kingdom*, in a similar case called *R v Horncastle*. Both cases raised the question whether there could be a fair trial when a defendant was prosecuted based on evidence given by witnesses who subsequently did not attend the trial in person and therefore were not available to be cross-examined (questioned) by the defendant.

In his judgment in *Horncastle*, Lord Phillips, President of the Supreme Court in 2009, said that although the requirement to “take into account” the Strasbourg jurisprudence (legal theory) would “normally result” in the domestic court applying principles that are clearly established by the ECtHR. “There will, however, be rare occasions where the domestic court has concerns as to whether a decision of the Strasbourg court sufficiently appreciates or accommodates particular aspects of our domestic process. In such circumstances, it is open to the domestic court to decline to follow the Strasbourg decision, giving reasons for adopting this course”.

Meanwhile, the UK Government had appealed the lower chamber’s decision in *Al-Khawaja*, and in December 2011, the Grand Chamber of the ECtHR gave its judgment. This time, the Strasbourg court adopted a more flexible position, reiterating that hearsay evidence should not be permitted where it would be the “sole or decisive evidence” in a prosecution, but noting the need for a careful case-by-case assessment. Commentators noted how the Strasbourg court had evidently taken into consideration the UK Supreme Court’s 2009 judgment in *Horncastle*, demonstrating the concept of ‘dialogue’ between the two courts.



The Supreme Court, London



Why is it important we

have a Supreme Court?

There are several reasons why any civilised country needs an independent judiciary, and why at the top of the court system there needs to be a final point of appeal – essentially an ultimate point where questionable points of law and interpretation of legislation are determined.



The Supreme Court's duty is to adjudicate (decide) upon points of law of great public importance, such as those arising out of the implementation of the Human Rights Act. Once the UKSC has decided a point of law, it sets a *precedent*. This means that all 'lower' courts beneath The Supreme Court must follow what the UKSC has decided in their future judgments.

The Court's judgments are regularly shown by news broadcasters. The precedent they set for lower courts can have a considerable impact upon society

(who were formerly very experienced lawyers in one form or other) from across the UK. The Supreme Court's judgments in matters of *common law* (where there is no statute, or parliament-defined legislation, to guide the courts) are widely respected around the world, and cited by judges from all sorts of other countries that follow the common law tradition (these tend to be countries within which the UK has previously been closely involved in governing).

The Supreme Court is made up of some of the most experienced and talented judges

The Court has a vital role in maintaining a healthy, balanced relationship between the different branches of government – the elected parliament who debate and pass legislation, the executive of government ministers who direct national policy, and the judiciary, who uphold the rule of law, safeguard civil liberties and help resolve disputes. Without a Supreme Court, or similar 'top court', there is a danger that the other two branches of government may become too powerful and start to impede on the fundamental rights of citizens.

Having moved the highest court of appeal in the United Kingdom from a committee of the House of Lords to the Supreme Court in a separate, user-friendly building, it is now much easier for the members of the general public to see the court in operation and understand its work. As you will learn from your visit, public accessibility was one of the most important reasons for the creation of the UKSC.

Cases heard by the
Identifying significant



highest court in the land:
'points of law'

Using the list on *Sheet S2*, can you work out **which specific human rights were raised as points of law** in the following cases heard at The Supreme Court, or its predecessor, the Appellate Committee of the House of Lords ("The Law Lords")?

1) Naomi Campbell sued *The Mirror* newspaper, which had printed photographs of her without permission, coming out of a drugs rehabilitation centre. Her lawyers took the case all the way to the Appellate Committee of the House of



Lords after *The Mirror* won its case in the (lower) Court of Appeal. The newspaper argued that publishing the story was in the public interest.



2) A man from Iran and a man from Cameroon, who were asylum seekers, wished to appeal against the decision which denied them asylum in the UK. They appealed on the grounds that they were both homosexual and would face persecution if sent back to their home

countries. Iran imposes the death penalty for homosexual practices and Cameroon punishes such practices with imprisonment.

3) A student took her case to the Appellate Committee of the House of Lords as she was denied the right to attend her school wearing a religious form of clothing known as a *Jilbab*. She wished to wear this form of clothing because she found the school uniform was too revealing and therefore went against her religious beliefs.



4) The 'Countryside Alliance', a pro-hunting group, wanted to challenge the legality of the Hunting Bill 2005 which sought to outlaw hunting with dogs (particularly fox hunting, but also the hunting of deer, hares and mink and organised hare coursing) in England and Wales.





**Cases heard by the highest court in the land:
Identifying significant 'points of law'**

1) Naomi Campbell sued *The Mirror* newspaper, which had printed photographs of her, without permission, coming out of a drugs rehabilitation centre. Her lawyers took the case all the way to the Appellate Committee of the House of Lords after *The Mirror* won its case in the (lower) Court of Appeal that publishing such a story was in the public interest.

Points of Law: The right to respect for private life; the right to freedom of expression.

2) A man from Iran and a man from Cameroon, who were asylum seekers, wished to appeal against the decision which denied them asylum in the UK. They appealed on the grounds that they were both homosexual and would face persecution in their home countries if sent back to their home countries. Iran imposes the death penalty for homosexual practices and Cameroon punishes such practices with imprisonment.

Point of Law: The right not to be tortured or treated in an inhuman or degrading way; the right to freedom of expression.

3) A student took her case to the Appellate Committee of the House of Lords as she was denied the right to attend her school wearing a religious form of clothing known as a *Jilbab*. She wished to wear this form of clothing because she found the school uniform was too revealing and therefore went against her religious beliefs.

Points of Law: The right to education; the right to freedom of thought, conscience and religion.

4) The 'Countryside Alliance', a pro-hunting group, wanted to challenge the legality of the Hunting Bill 2005 which sought to outlaw hunting with dogs (particularly fox hunting, but also the hunting of deer, hares and mink and organised hare coursing) in England and Wales.

Points of Law: The right to peaceful enjoyment of possessions; the right to respect for private life.