





# The Supreme Court of the United States of America (SCOTUS) and The Supreme Court of the United Kingdom (UKSC): A comparative learning tool

This resource summarises some of the similarities and differences between the most senior appeal courts in the United States and the United Kingdom. This is an area often explored by students studying Law at Sixth Form/Further Education level.

This resource is intended to encourage discussion within groups, and some questions are provided at the end to encourage you to think about the different approaches of the two courts.

This resource is offered as material for schools and colleges and is not intended as a comprehensive guide to the statutory position of either Supreme Court or their practices. Queries about the work of UKSC should be directed via our website, [www.supremecourt.uk](http://www.supremecourt.uk).

	SCOTUS	UKSC
	 	 
<b>When was it established?</b>	<p>The SCOTUS is over 200 years old and was established in 1789.</p> <p>Article III, Section 1, of the American Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."</p> <p>The Supreme Court of the United States was created in accordance with this provision and by authority of the Judiciary Act of 24 September 1789 (1 Stat. 73). It was organised on 2 February 1790.</p>	<p>The UKSC is five years old and opened on 16 October 2009. It is located in the former Middlesex Guildhall building. The grade II listed building was built in 1913 and was renovated between 2007 and 2009 to turn the building into a suitable home for the Supreme Court.</p> <p>The highest court of appeal for the UK used to be found in the House of Lords, sitting as what was known as the Appellate Committee of the House of Lords.</p>

	<a href="http://www.supremecourt.gov/about/briefoverview.aspx">http://www.supremecourt.gov/about/briefoverview.aspx</a> 07/07/14	The 2005 Constitutional Reform Act was the act which provided for a Supreme Court of the United Kingdom.
<b>How are Supreme Court Justices chosen?</b>	<p>The US President appoints Supreme Court Justices based on factors including merit, record, experience and political affiliations.</p> <p>The process is therefore somewhat politicised, with Justices often labelled as 'liberal' or 'conservative'.</p> <p>The Justices can be chosen from a large pool and their backgrounds can be varied. Many have never been trial judges. There is no distinction between lawyers in the USA – they are all 'attorneys'.</p> <p>Justices, who are nominated by the President are confirmed with the "advice and consent" (majority vote) of the Senate.</p>	<p>When a vacancy arises, an independent selection committee is set up, consisting of representatives from the different legal jurisdictions of the UK (England and Wales, Scotland and Northern Ireland) and two senior judges. The President of the Supreme Court chairs the selection commission.</p> <p>To be eligible to become a Justice, an individual must either have been a High Court or Court of Appeal (or equivalent) judge for two years or a practicing lawyer for at least 15 years. The positions have typically been advertised openly, and interviews held for short-listed candidates.</p> <p>Once a new Justice has been nominated, the name is sent to the Lord Chancellor, who in some limited circumstances can reject the nomination or invite a reconsideration. Once approved, the Lord Chancellor sends the nomination to the Prime Minister's Office, who in turn forward the name to Her Majesty The Queen, who makes the appointment on the advice of the Prime Minister.</p> <p>Supreme Court Justices cannot belong actively to any political party.</p>
<b>Who are the Supreme Court Justices?</b>	Currently the SCOTUS is made up of 9 Justices, there are 6 men and 3 women. Their backgrounds vary. They are of different ethnicities including one African American male and a Hispanic and Latino female.	The UKSC has a total of 12 Justices, there are 11 men and 1 woman (as at October 2014), they come from a variety of legal backgrounds but have all been practising barristers at one stage. One is from Northern Ireland, two are from Scotland and the rest are from England and Wales. They are all white.
<b>How long can Justices remain?</b>	Once appointed, SCOTUS Justices effectively have life tenure, serving "during good behaviour", which terminates only upon death, resignation, retirement, or conviction of impeachment.	Once appointed, UKSC Justices can serve "during good behaviour" until the mandatory retirement age of 70 (for judges appointed to the bench after 31st March 1995) or 75 (for those appointed before 31 March 1995).
		Unless they choose to stand down or resign, it is only the Houses of Parliament (by joint resolution) that has the power to remove them from office.

<p><b>How many cases want to come to the Supreme Court?</b></p>	<p>The Court receives approximately 10,000 petitions for a writ of certiorari (an order to the lower courts to deliver all its records for a case) each year. The Court grants and hears oral argument in about 75-80 cases.</p> <p><a href="http://www.supremecourt.gov/faq.aspx#faqgi9">http://www.supremecourt.gov/faq.aspx#faqgi9</a></p>	<p>The UKSC receives around 230 applications for permission to appeal and hears around 90 cases per year. The UKSC Justices also serve on the Judicial Committee of the Privy Council (JCPC) which is the final court of appeal for some small commonwealth countries and British overseas territories. The JCPC hears around 40 cases per year.</p>
<p><b>How does a case get to the Supreme Court?</b></p>	<p>If at least four of the nine SCOTUS Justices feel a case has value then they will issue the legal order ‘writ certiorari’ to the lower courts. The lower courts will then send all the case documents to be analysed.</p> <p>The SCOTUS will issue ‘writ certiorari’ when it is felt there is a large legal issue of constitutional impact that will affect a large majority of the public. They will also take cases where the lower courts have been unable to agree and have interpreted the law differently.</p> <p>Most cases usually come from federal courts of appeal or sometimes from State Supreme Courts and Circuit courts.</p>	<p>A case will usually come on appeal to the UKSC from the lower courts. A panel of three Justices consider written applications to decide if a case raises an arguable point of law of general public importance (occasionally these decisions are made following an oral hearing).</p> <p>Most cases come from the Court of Appeal (or Court of Session) but some can ‘leapfrog’ from the High Court under certain circumstances.</p> <p>Cases are also heard on devolution issues, where there is a dispute over whether the Scottish Parliament, Northern Irish or Welsh Assemblies have gone beyond the powers devolved to them by the UK Parliament. The Law Officers of the UK jurisdictions can refer such questions to the UKSC directly.</p>
<p><b>How are cases heard at the Supreme Court?</b></p>	<p>The SCOTUS hears cases in a panel of nine Justices (i.e. en banc). The lawyers who present the case are called attorneys and the two sides in the cases are the appellants and the appellees. The Justices are on a raised level, overlooking the courtroom.</p> <p>The appellant brings the appeal whilst the appellee argues against the appeal. Each side usually has 30 minutes to present their case, on occasion they are given an hour each. A few cases can be heard on the same day.</p> <p>Most of the arguments have been considered by the Justices beforehand as the attorneys will have prepared a large skeleton argument for their case.</p> <p>Before each session SCOTUS Justices ‘without fail, engage in a wonderful</p>	<p>The UKSC Justices usually hear cases in a panel of five, although they have the potential to hear cases as a panel of seven or nine depending on the importance of the appeal. All of the courtroom is arranged on one level.</p> <p>Most of the case is presented through oral argument and the cases usually last around two days. The lawyers who present the case are usually senior barristers, or solicitors with ‘rights of audience’ who address the Court. Other lawyers (typically solicitors) usually attend court to pass on information between the client and those representing him or her.</p> <p>The two sides in a case are called appellants (the party that brings the appeal) and respondents (the parties who are arguing against the appeal.)</p>

	<p>custom. Each justice shakes the hand of every other justice before walking into the courtroom—an important reminder that, despite the justices’ occasional differences in opinion, the court is a place of collegiality and common purpose.’</p> <p><a href="http://www.smithsonianmag.com/history/justice-sandra-day-oconnor-on-why-judges-wear-black-robles-4370574/#ID6d81pUxFpmHvoc.99">http://www.smithsonianmag.com/history/justice-sandra-day-oconnor-on-why-judges-wear-black-robles-4370574/#ID6d81pUxFpmHvoc.99</a></p>	
<p><b>How do Supreme Court Justices reach a judgment?</b></p>	<p>At the SCOTUS after the oral arguments, the justices deliberate and debate the points raised in the appeal with each other</p> <p>“They review the case with their clerks (who are recent law school graduates), and chart out an initial impression of their votes.</p> <p>On a day soon thereafter, the justices meet in a conference room, casting their votes. The senior justice on the winning side assigns a justice to the task of writing the majority opinion. That justice will often assign a clerk to prepare a draft of the opinion, usually choosing the clerk who prepared the memo prior to the oral argument.</p> <p>The justice will then use that memo as a basis for writing his or her opinion. The opinion is then passed along to members of the majority, who suggest revisions. Some opinions are revised a dozen or more times before they are announced.</p> <p>When each member of the majority signs off on the opinion, it is ready to be made public.</p> <p>From the bench, the author of the majority opinion will summarize the decision. It is known as ‘the opinion of the court.’ At that point, the case is forever part of Constitutional law doctrine.’</p> <p><a href="http://www.constitutionfacts.com/us-supreme-court/">http://www.constitutionfacts.com/us-supreme-court/</a></p>	<p>The UKSC Justices hearing an appeal hold a preliminary meeting before the hearing to discuss their initial thoughts on the case. This meeting is private, and not attended by any staff.</p> <p>Straight after a hearing, the Justices meet to deliberate, again in private. The most junior Justice begins the deliberations, and the most senior (usually the President or Deputy President) give their views last. During this meeting, it would be normal for one Justice to be identified to start writing a judgment reflecting the view of the majority.</p> <p>The Justices then share their emerging drafts with each other, and if necessary have further discussions. Justices might decide to ‘sign up’ to another’s judgment, or write brief concurring judgments (or dissenting ones).</p> <p>Once the judgment is ready (comprising the separate judgments of each of the Justices on the panel who wishes to contribute), a time is appointed for it to be published or ‘handed down’. This is usually on a Wednesday at 9.45am. One of the Justices involved in the case will read out a summary of the judgment in court and video footage of the proceedings is streamed live. The full judgment is published on the website immediately.</p>
<p><b>What do Justices wear in court?</b></p>	<p>The Justices at SCOTUS wear black judicial robes:</p>	<p>The UKSC Justices wear business suits (or equivalent) in court. This reflects the fact that when sitting as the Appellate Committee of the House of Lords, the</p>

	<p>‘The court’s internal correspondence suggests that, in the 19th century, the justices all wore black silk robes from a single tailor. By the 20th century, other materials were often used and judges selected their robes from those available to college graduates and choir singers.’</p> <p><a href="http://www.smithsonianmag.com/history/justice-sandra-day-oconnor-on-why-judges-wear-black-robles-4370574/#LXuh3PiStADvwexl.99">http://www.smithsonianmag.com/history/justice-sandra-day-oconnor-on-why-judges-wear-black-robles-4370574/#LXuh3PiStADvwexl.99</a></p>	<p>judges did not wear traditional court attire.</p> <p>However, each Justices has an ornate black and gold threaded judicial robe which they will wear for ceremonial occasions, such as the ceremony at Westminster Abbey to mark the beginning of the legal year.</p>
<p><b>What powers does the Supreme Court have?</b></p>	<p>The US Congress can legislate only in accordance with the US Constitution.</p> <p>Ultimately, it falls to the US Supreme Court to determine whether legislation is constitutional – which means SCOTUS has a considerable amount of power and the ability to ‘strike down’ legislation if it is found to be unconstitutional.</p> <p><a href="http://ukscblog.com/ussc-v-uksc/">http://ukscblog.com/ussc-v-uksc/</a></p>	<p>The UK does not have single written constitution, so its power is different to the SCOTUS.</p> <p>The UKSC can decide that certain legislation is incompatible with the Human Rights Act 1998, or the European Convention of Human Rights. The UKSC does not in itself ‘strike down’ the legislation in question, but leaves it for Parliament to decide what to do about resolving the incompatibility.</p>
<p><b>How accessible is the Supreme Court?</b></p>	<p>Paper copies of SCOTUS judgments are handed out to those in the courtroom on the day of a judgment. They can be up to 200 pages long.</p> <p>Audio files of the oral argument are made available on the SCOTUS website shortly after each hearing.</p> <p>There are no cameras allowed in the court rooms, and no photography around the building.</p> <p>The building is open to the public, but due to high demand there can be very long queues to go inside.</p> <p>The SCOTUS does not engage officially with any form of social media.</p>	<p>Judgments are published on the UKSC as soon as the Justices deliver the decision in court. Each judgment is accompanied by a two-side ‘press summary’ to help readers.</p> <p>Cameras record hearings in each courtroom and the main UKSC case of the day is streamed live on the Sky News website, and footage is made available to news broadcasters.</p> <p>The building is open to the public to watch cases, although photography is not allowed in courtrooms where appeals are being heard. Summary information about the cases are provided at the front desk on arrival.</p> <p>The UKSC uses social media such as Twitter to inform the public of important UKSC news. It also has its own YouTube channel with an introductory video and summaries of previous judgments, as delivered by the Justices in court.</p>

**Some questions to consider**

**Which appointments process do you think is most appropriate for senior judges, and why?**

**Which Supreme Court do you think is more powerful, and why?**

**Can you think of three points for and against the longer oral presentation of cases found at UKSC?**

**What are the benefits and drawbacks of senior courts engaging with users on social media?**