

Supreme Court Debate

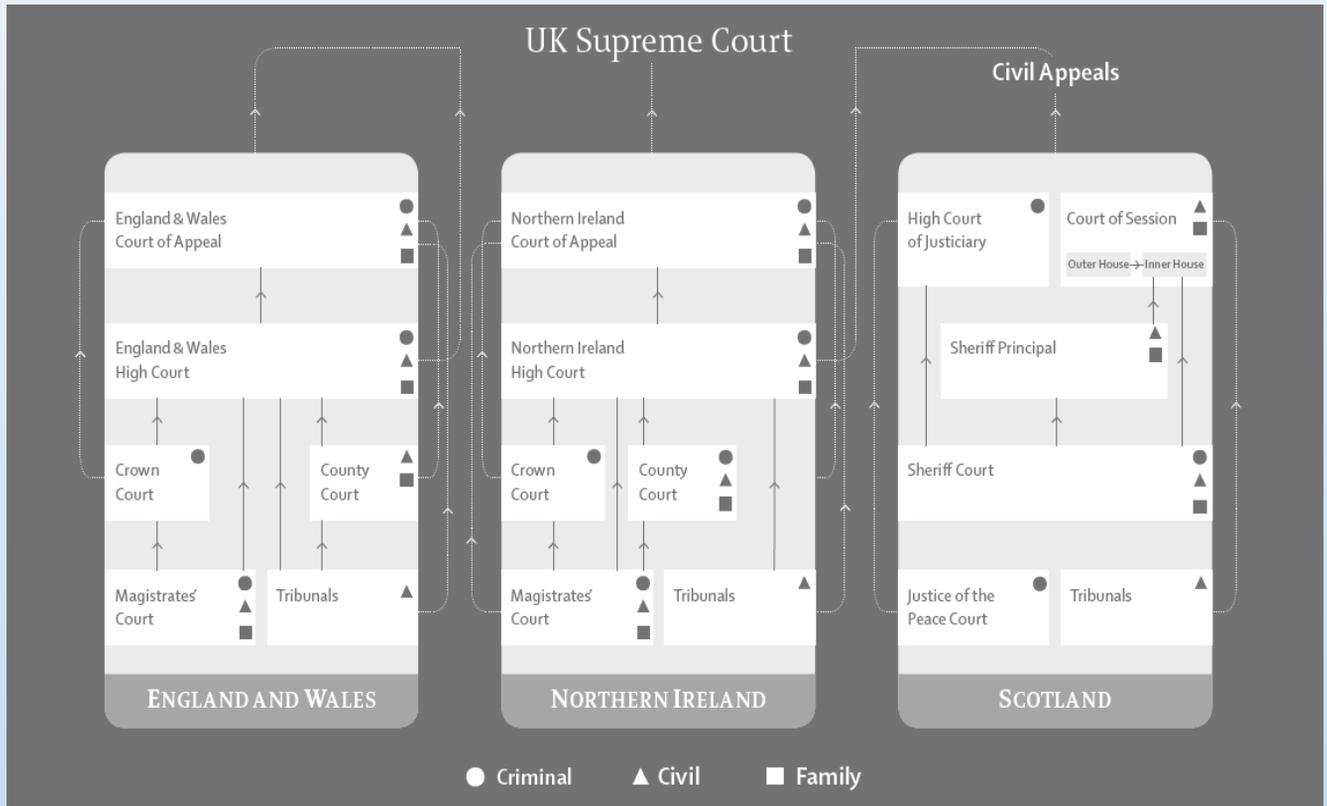


**Is it fair for the Home
Department to ban foreign
spouses' entry to the UK
unless both parties are over
21?**



- The Supreme Court is the highest court of appeal in the United Kingdom.
- It opened on 16 October 2009.
- There are 12 Supreme Court Justices in total.
- Each case must have an **arguable point of law of general public importance.**
- Some of the recent key cases include the right to die, prenuptial agreements, religious discrimination and privacy.

A case must go through several courts before it makes it to the Supreme Court



Please watch the Supreme Court introductory video:

<http://www.supremecourt.uk/introductory-film.html>



What route would a civil case take to come to the Supreme Court from England and Wales?



YOUR DEBATE

Is it fair for the Home Department to ban foreign spouses' entry to the UK unless both parties are over 21?

- In 2008, the government introduced a ban on non-EU spouses under the age of 21 coming to the UK with their partners, and they were denied entry or settlement visas.
- The ban was an amendment of Immigration Rules, and increased the age of settlement for non-EU spouses from 18 to 21.



The ban was introduced in an attempt to deter forced marriages. A forced marriage is one where at least one party is married ‘without her or his free and full consent through force or duress, including coercion by threats or other psychological means’.



What is the difference between an arranged marriage and a forced marriage?



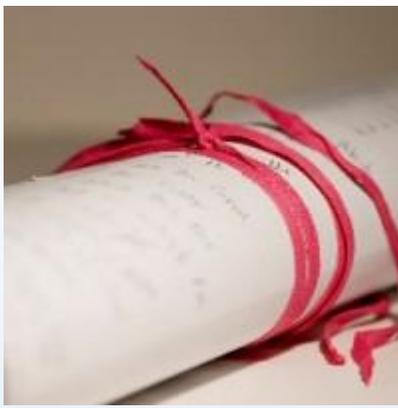
Case Background

Couple one

- Mr Diego Aguilar Quila, a Chilean national, married Ms Amber Jeffery, a British citizen in 2008.
- Mr Aguilar Quila applied for a marriage visa before the amendment took effect, but his application was refused as his wife was only 17 (she had to be 18 or over).
- By the time Ms Jeffery turned 18, the amendment had come into force and the Home Office refused to waive it.
- In order to stay together, they were forced to leave the UK, initially to live in Chile and subsequently Ireland. Ms Jeffery had to give up her place at university, where she'd planned to study languages.

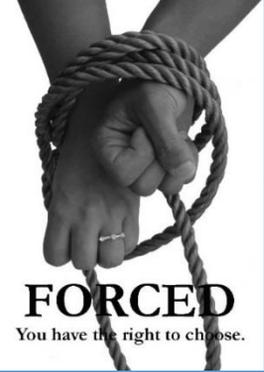
Couple two

- Shakira Bibi, a Pakistani national applied to join her husband Suhyal Mohammed, a British citizen, in the UK.
- The couple had a traditional arranged marriage in Pakistan in 2008 in which both families played a role in finding a suitable partner, and both parties freely consented.
- The application was refused as both parties were under 21.



Circumstances in both cases

- **In neither couple's case was there any suggestion that the marriages were forced.**
- **Both couples argued that the amendment was in breach of Article 8 of the European Convention of Human Rights; the right to a private and family life.**
- **They lost their case for a judicial review at the High Court, but won at the Court of Appeal. The Secretary of State for the Home Department appealed to the Supreme Court to keep the ban in place.**



Forced marriages

- In 2011, the Forced Marriage Unit provided advice or support in nearly 1500 cases, of which 78% were female and 22% male.
- Around 40% of victims of forced marriage are under 18 years.
- More than 80% of those supported were UK citizens
- Many forced marriages involve rape, violence, threats and abduction.
- The legal age where people can marry in the UK is 16, but parental permission is needed until the age of 18.
- Minimum marriage visa age is 21 in Austria, Belgium, Cyprus, Lithuania and Malta.

Article 8

- **Article 8 protects the private life of individuals against arbitrary interference by public authorities and private organisations such as the media. It covers four distinct areas: private life, family life, home and correspondence.**
- **Article 8 is a qualified right, so in certain circumstances public authorities can interfere with the private and family life of an individual. These circumstances are set out in Article 8(2). Such interference must be proportionate, in accordance with law and necessary to protect national security, public safety or the economic wellbeing of the country; to prevent disorder or crime, protect health or morals, or to protect the rights and freedoms of others.**

Debate roles



You will be split into one of the following teams:

Justices Team

The justices' job will be to listen carefully to the appellants and respondents during their debate, ask questions and eventually decide which side has been the most persuasive. There must be an odd number of justices.

Appellant Team

The appellant team is usually 'pro' the debate proposition e.g. it is fair... They will be the lawyers' in the case and will take it in turns to present arguments, respond to the respondents' arguments and answer the justices' questions.

Respondent Team

The respondent team is usually 'anti' the debate proposition e.g. it is not fair... They will be the lawyers' in the case and will take it in turns to present arguments, respond to the appellants arguments and answer the justices' questions.

Timetable for debate
50 min debate preparation
30 min debate
Appellants 8 min
Respondents 8 min
Appellant 4 min
Justices 10 min to consider and deliver
judgment

A lawyer or judge would always prepare for a case. So now its time for your own research.

Supreme Court website:

<http://supremecourt.uk/>

For more information about courts in the UK:

<http://www.justice.gov.uk>

Background to Quila case:

http://news.bbc.co.uk/1/hi/uk_politics/7708305.stm

<http://www.bbc.co.uk/news/uk-12054705>

<http://www.bbc.co.uk/news/uk-15272121>

<http://www.bbc.co.uk/news/uk-politics-15617871>

Court of Appeal judgment on Quila/Bibi case:

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/1482.html>

For the Supreme Court judgment on the Quila/Bibi case, scroll down to 12 October 2011 – judgment and press summary in PDF format:

<http://www.supremecourt.uk/decided-cases/>



What else can you find out to help you on the day?