

Paper 2: UK Government

Topics 4 & 5

The Supreme Court and The EU

What you need to know

Key issue
Role, powers and composition of the Supreme Court
Judicial neutrality and judicial independence
Influence of the Supreme Court on the executive and parliament
Aims, roles and history of the EU
The impact of the EU on UK politics
Relations between the institutions and the location of sovereignty

Lesson 1 – The role and composition of the UK Supreme Court

Resources

SC video, Jenkins textbook p. 215 – 216, info below

The Role and Composition of the Supreme Court

- Created in the Constitutional Reform Act, 2005
- Ended the fusion of powers at the highest level of the UK judiciary.
- Abolished the Law Lords
- Reform was to create greater transparency and bring the UK into line with most other Western countries

Role of the Lord Chancellor

- One of the most ancient offices of the state.
- Always a senior member of the Cabinet
- **Before** the Constitutional Reform Act they:

- Acted as Speaker of the HOL
- Were head of the judiciary
- Was the senior judge of the HOL

Post Reform

- Became Secretary of State for Justice
- Acts as legal advisor to PM and Cabinet and ensures the effectiveness and independence of the judiciary

Structure of the UK Legal System

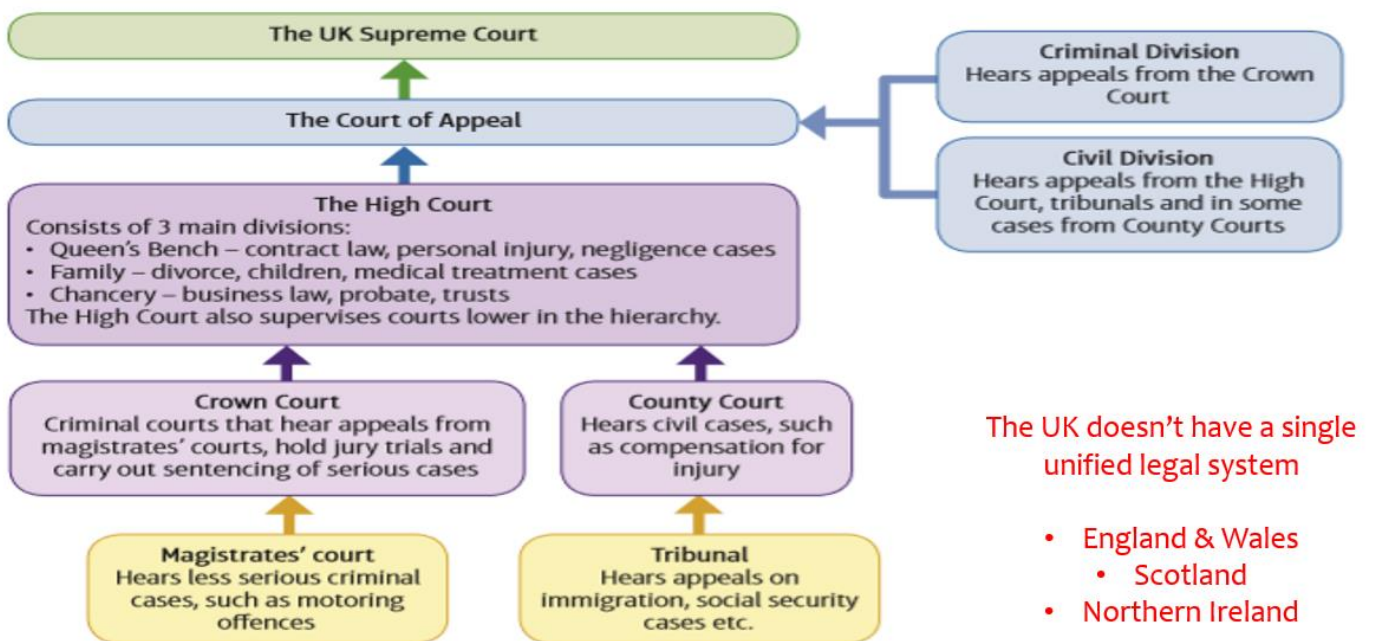


Figure 1.1: The Supreme Court's position in the structure of the judiciary for England and Wales

The Supreme Court

- It is the only UK wide court
- It is the final court of appeal - civil cases and criminal cases (except Scotland)
- Will only hear cases it believes are important
- Hears appeals on arguable points of law, specifically...
 - Matters involving the public and their rights
 - Constitutional importance – the Court interprets EU law (until Brexit...)

Makes rulings on cases in devolved authorities

Composition and Appointment

- There are **12 senior judges**

- In most cases **5-9 justices** take part (always an odd number – **why?**).
The more important the case the more justices.
- Only two female justices – **another potential problem here?**

The most senior judge is the **President**, in this case **Lord Reed of Allermuir**

Activity What is the role of the Supreme Court in the UK?

Examples of Supreme Court Cases

Scottish Government “Named Person” Scheme - 2016

- The Supreme Court overturned a plan by the Scottish Government to appoint a state guardian (Health Visitors, Social Workers, Teachers, Doctors) to be responsible for the wellbeing of every child in Scotland.
- The Supreme Court ruled this was in conflict with Article 8 of the Human Rights Act (the right to a private and family life).
- This is an example of the Supreme Court ruling that a devolved body had acted beyond its authority (“*Ultra Vires*”)

Do you agree with this decision? Why might members of the Scottish government argue against the power of the Supreme Court to do this? Think about democracy...

The Charlie Gard Case - 2017

- Charlie Gard was born with a rare inherited disease and had to be moved on to life support.
- Great Ormond Street doctors argued that Charlie would not recover and that he had no quality of life and was in extreme pain.
- Charlie Gard’s parents wanted to take him to the US to try a new experimental treatment.
- May 31st - Supreme Court reviewed the case and ruled that life support machine should be turned off.

What is the tension and potential criticism of the Supreme Court here? Think about conflicting rights (Paper 1 synoptic links)...

Jogee 'Joint Enterprise' Case - 2016

- Paul Fyfe was stabbed to death by Mohammed Hirsi.
- His friend Ameen Jogee, encouraged Hirsi to commit the killing.
- In similar cases such as this, the accomplice could also be found guilty of murder.
- Jogee appealed the Supreme Court and the precedent was overturned
- Jogee was then retried and found guilty of manslaughter.
- The Supreme Court had effectively rewritten the law on 'joint enterprise' and opened the door for similar appeals.

What is the potential problem here? Who "should" change these laws?

Lesson 2 - The key operating principles of the Supreme Court, including judicial neutrality and judicial independence and their extent.

Resources – Jenkins textbook p. 215 – 219, video, info below

It is vital that Supreme Court Justices are independent of the executive and legislature. The rule of law depends on judges not being influenced by the government

Instead they should reach decisions based entirely on the principles of fair justice

Judges are expected to be neutral and never influenced in their decisions by social or political prejudice

What is the difference between neutrality and independence?

Neutrality =

Independence =

To what extent is the Supreme Court neutral and independent?

Lesson 3 - The Impact and Influence of the Supreme Court

Resources – video, Jenkins textbook p. 219 - 223

How influential is the Supreme Court on the executive and parliament?

The Supreme Courts key interactions with the other branches of government involve the following...

- **Determining the meaning of law – p. 219 -**
- **Establishing when a body has acted “Ultra Vires” – p.220**
- **Determining the location of sovereignty – p. 220-1**
- **Declaring incompatibility with the HRA – p.222**

Activity - Read through the areas above in your textbook and write down the key examples that demonstrate the Supreme Court carrying out these roles.

Remember: The Supreme Court can use the power of **JUDICIAL REVIEW** but it cannot strike down legislation due to parliamentary sovereignty.

Supreme Court – Influence and Case Studies

Is the Supreme Court influential?

- 👍 The Supreme Court can stop executive action according to the principles set out for judicial review.
- 👍 Their position as the 'final court of appeal' dealing with the most significant matters affords them significant power. For example, the Article 50 ruling in 2017 (see below).
- 👍 Since the Human Rights Act, the Supreme Court has increased its ability to protect citizens' rights, usually from government actions. As a result, the Court has become more involved in human rights debates, being generally more aware of issues of civil liberties.
- 👍 Senior judges have become influential by making public comments about major issues. For example, about sentencing policy and human rights.
- 👍 The Supreme Court has acquired a reputation for standing up for rights, which has led critics to suggest that they are 'reading rights into' laws that were not intended by governments. This has led to charges of judicial activism.
- 👍 In freedom of information cases, the Supreme Court has upheld decisions to publish information against the wishes of ministers. For example, Prince Charles's 'black spider' memos.
- 👎 There are no 'higher' constitutional laws, so the Supreme Court cannot strike down statute law.
- 👎 If the Supreme Court sets aside decisions by ministers or public bodies, Parliament may pass legislation which allows such decisions. For example, Belmarsh and Foundland (see page 11 for more on these cases).
- 👎 The Supreme Court cannot be pro-active – it must wait for cases to be brought before them.
- 👎 The Supreme Court cannot make judgements beyond the law, even in the interests of natural justice. For example, right to die cases.
- 👎 Supreme Court Judges are unelected and understand their constitutional role in relation to elected politicians.
- 👎 Parliament is sovereign, which means that it decides if it wishes to amend laws in line with the Supreme Court's 'suggestions'.
- 👎 The Supreme Court cannot overturn statutes even if they go against the ECHR.



R v Horncastle [2009]

The focus: the use of 'hearsay' – statements from absent witnesses, who are not under oath at the time and are not able to be cross-examined – has long been permitted in British courts.

The case: this case centred on a clash between the UK courts' and the European Court of Human Rights' (ECtHR) view of 'hearsay'. The ECtHR (Strasbourg) ruled if a person was convicted on the strength of hearsay evidence, then their human right to fair trial would be infringed.

The decision: the UK government felt this stance posed a real risk to **justice** – and the Supreme Court justices agreed. 'Although normally we follow the Strasbourg cases, in the Horncastle case we didn't,' said Lord Neuberger. 'We explained in some detail why we thought our system was fair and that Strasbourg had in fact gone wrong.' As a result of the ruling, the ECtHR altered its original decision. Lord Neuberger showed 'there can be genuine, civilised and constructive dialogue between the UK courts and the ECtHR'.



Nicklinson v Ministry of Justice [2014]

The focus: Tony Nicklinson (and two others) had locked-in syndrome, having been paralysed in a road accident, and wished to go to a Swiss suicide clinic. 'They all felt condemned to a life that was worthless, demeaning and sometimes even rather painful,' said Lord Neuberger.

The case: the Supreme Court had to decide whether the **Suicide Act 1961**, which made it illegal to encourage or aid another person to commit suicide, should be ruled unlawful. The men claimed the Act infringed their right to decide when to die.

The decision: nine justices took part, showing the importance of the case. Although there were differences of opinion, the court decided against the men by seven to two, agreeing the issue centred on a **moral judgement** which should be addressed by Parliament.

Activity – is the Supreme Court Influential?

Lesson 4 – The relationship between the executive and Parliament

Resources – video, Jenkins textbook p. 223 - 227

In 1976 Lord Hailsham coined the phrase “*elective dictatorship*” to describe the way in which power had become concentrated in the hands of the UK executive.

Hailsham argued that the only real check on executive power was the holding of general elections, with the executive free to do more or less what it wishes in between...

Hailsham argued that a government had the power to introduce ***far-reaching and even irreversible changes*** with little opposition... (p.223 – elective dictatorship reasons)

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What aspects of the UK political system help to create this “*executive dominance*”? p.223 – 224 – examples of weak parliamentary influence

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Examples of strong parliamentary influence – p. 224

Has the ability of Parliament to control government increased in recent years? P.225 - 227

Lesson 5 – The aims of the EU

Resources

Jenkins textbook p. 228 – 231, video, info below

What are the aims of the EU?

The Four Freedoms

“Indivisible” =

Which would you keep? Why? What are the benefits? Be specific...

To what extent has the EU achieved it's aims?

Expansion, Integration & Peace	
Has...	Has not...

Economic & Monetary Union

Has...

Has not...

Political & Social Union

Has...

Has not...

What is the role of the EU? (video)

Lesson 6 – The Impact of the EU on the UK

Resources – Jenkins textbook p. 232 – 233, video

Benefits for the UK	Arguments against membership of the EU

Key Facts about the European referendum – p. 235

- 1.
- 2.
- 3.
- 4.
- 5.

Impact of leaving the European Union on the UK

Activity – read the info below and then sum it up in a picture and 5 key words below

The constitutional impact

The position is clear. Upon leaving the European Union, the UK Parliament regains all its sovereignty. EU laws are no longer part of UK law and the UK is no longer subject to EU treaties. The European Court of Justice (not to be confused with the European Court of Human Rights) has no jurisdiction in the UK.

Another minefield for the UK government is the demand from the SNP-led Edinburgh government for a second independence referendum. The case for this is that a majority of Scottish people voted to stay in the EU, and thus face being removed from it against their will, as a result of the Brexit vote by the UK as a whole. Constitutionally, Scotland cannot negotiate its own relationship with the EU as part of the UK, so the independence issue has been reopened. Extricating the UK from the EU is far from a straightforward process after more than 40 years of close involvement between the two.

IMAGE



5 KEY WORDS

The political impact

Here the picture is less clear. The political repercussions of the UK people's decision to leave the EU will be felt for many years to come. However, a number of conclusions can already be reached. These include the following:

- The top level of the Conservative Party who had supported the 'remain' side of the campaign lost power, notably David Cameron and George Osborne, the chancellor of the exchequer.
- The Conservative Party is seriously divided between those who wish to retain close relations with the EU and those who want a clean break (so-called 'soft' or 'hard' Brexit).
- The Labour Party is similarly divided.
- The referendum revealed deep divisions in UK society, between young and old, England and Scotland, the cities and the countryside, the well off and the poor. The vote to leave was seen as something of a protest against the 'political class' in Westminster and a populist movement against powerful vested interests in general.
- Because Scotland voted overwhelmingly to remain inside the EU but will be forced out, there are renewed demands for Scottish independence so that Scotland can remain in the EU.
- The UK will now have to undertake a long-term programme of developing new political and trade links with other countries. When the UK was a member it was not free to develop separate trading arrangements with states outside the EU.
- The issue of immigration control, which is now *potentially* in the hands of a newly independent UK, will be a key political issue for years to come.



Campaigners for both sides of the 2016 EU referendum

IMAGE

5 KEY WORDS

What influence will the EU have after the UK leaves?

The UK will become a completely sovereign state after March 2019. However, at some stage there may well be a new treaty with the EU. If there is such a treaty it might have some of the following conditions:

- The UK may be obliged to allow workers to enter the workforce without hindrance.
- There may be reciprocal arrangements to allow people to move freely in and out of the UK from EU countries.
- If there is a trade deal, it may be that the UK will have to allow goods and services to be imported without any import taxes (tariffs), in return for tariff-free exports to the EU.
- There may be a reciprocal arrangement to allow the free movement of financial capital in and out of the EU.
- There may be other agreements governing international policing, security, drug enforcement, internet control etc.

The so-called 'four freedoms' of the EU are:

- Free movement of people.
- Free movement of labour.
- Free movement of financial capital.
- Free movement of goods and services.

Thus, even when the UK is no longer a member of the EU it may still be forced to accept one or more of these freedoms if it is to remain in the European single market or have special trading arrangements with the EU.

PICTURE

5 KEY WORDS

Lesson 7 – The location of sovereignty in the UK

Types of Sovereignty – in broad terms it means the ultimate authority to make decisions. However there are different varieties we need to understand...

Legal Sovereignty

- Concept defined in law
- Right to ultimate legal authority in a political system (person or body)
- No higher legal authority than parliament
 - Can legislate on any subject
- No parliament can bind its successors

Political Sovereignty

- Above legal sovereignty
- Ultimate political power
- Parliament's authority is from the people through elections
- Parliament is accountable to the electorate
- Parliament has formal legal sovereignty **BUT only because the people, who possess ultimate political power, allow them to do so**

How far has sovereignty moved between different branches of government?

In theory, parliament is sovereign.

In practice, a number of factors have been argued to be taking sovereignty away from parliament...

1. The Executive
2. The Judiciary (Supreme Court, HRA)
3. Devolution
4. Referendums (to the people)
5. EU Membership (EU laws that supersedes our own)

Activity

<https://www.youtube.com/watch?v=Tr3df1FgOqg>

Youtube - UK Politics: The location of sovereignty in the UK political system – Alan History nerd

Watch the video and make a mind map of key points

Extension – Revision

Essay Practice – Section B

Evaluate the extent to which the Supreme Court is important in limiting the power of the executive and legislature. (30)

Evaluate the extent to which the European Union's influence on the UK has been more positive than negative (30)

IF YOU DON'T HAVE TIME TO PLAN OR WRITE OUT A FULL ESSAY CREATE A "5 MINUTE PLAN" – IDENTIFY YOUR BIG POINTS AND LOA AS QUICKLY AS POSSIBLE AND THEN TRY TO ADD 3 SPECIFIC EXAMPLES TO EACH BIG POINT – TIME YOURSELF FOR 5 MINUTES MAXIMUM!