



LESSON 2 TEACHER'S NOTES

COURTROOM DRAMA – JUDGMENTS GIVEN ON THE CASES

CASE 1: KETTLING

At first a court ruled that the police 'kettle' (containment) of Climate Camp protesters on 1 April 2009 was unnecessary and unlawful. The judges commented that tactics used were 'unduly inflexible' and used 'unjustified force'. While it is legal for police to use 'kettling' as a last resort where there is a real risk of violence, the judges in this case felt that the risk was not high enough to justify its use.

The rights of the protesters that are relevant in this case are the 'right to meet together in a peaceful way' (Article 11), the 'right to express your views and opinion' (Article 10) and the 'right to liberty and security' (Article 5). Any limits placed on these rights must be necessary and proportionate. The judges had to balance these against the general need for public order and safety.

However, in December 2011, the police appealed against this decision and different judges decided that the kettling of the Climate Camp protesters had been justified because the two protests were only a quarter of a mile apart and there had been some links between the two protests (they were advertised on the website with similar names and had been part of a group of protests happening around that time). They therefore felt that the police had taken the decision in good faith and that there was a real risk of a breach of the peace.

Case: Moos & Anor, R (on the application of) v Police of the Metropolis [2011] EWHC 957

Source: <http://www.baillii.org/ew/cases/EWHC/Admin/2011/957.html>

CASE 2: HITTING CHILDREN IS PART OF MY RELIGION

The court ruled against the parents and teachers who wanted to use corporal punishment. While the judges accepted that the law against corporal punishment did interfere with the parents' right to freedom of religion under article 9, this right had to be balanced against the rights of the children. The judges felt that the statutory ban had a legitimate aim. Children were vulnerable and the aim of the legislation was to protect them and promote their wellbeing. Corporal punishment involved deliberately inflicting physical violence. The legislation was intended to protect children against the distress, pain and other harmful effects physical violence may cause. The judges therefore put the children's rights (particularly article 3 of the Human Rights Act – the right not to be tortured or treated in a way which is cruel or humiliating, and other children's rights in the United Nations Convention on the Rights of the Child) above the parents' right to hold their religious beliefs.

Case: Williamson v Secretary of State for Education

Source: http://www.1cor.com/1315/?form_1155.replyids=419

CASE 3: RIO FERDINAND

The judge ruled in favour of the *Sunday Mirror* in this case. The judge had to balance Rio's right to private and family life (Article 8) against the newspaper's right to express their views and opinions (Article 5). The judge found that, although the claimant's right to private and family life was relevant, there was a public interest in correcting a false image promoted by the claimant. It was also held that the article contributed to a debate as to the claimant's fitness to be a role model in the light of his appointment as England football captain.

Read more at <http://www.dailymail.co.uk/news/article-2043331/Rio-Ferdinand-affair-Footballer-loses-kiss-tell-privacy-case-Sunday-Mirror.html#ixzz1juvMaYvM>

Case: *Ferdinand v Mgn Ltd (Rev 2) [2011] EWHC 2454 (QB)*

Source: http://www.bailii.org/form/search_cases.html and enter case name in relevant field

CASE 4: CRIMINAL SENT TO LIVE IN THE COUNTRY WHERE HE WAS BORN

In this case the court ruled that the deportation of the man back to Pakistan was lawful, so he was not allowed to return to the UK. The judges had to balance the man's right to privacy and family life (article 8) with the duty of the state to protect its citizens from crime and violence. Although the judges accepted that the man had family in the UK, he also had family in Pakistan. The judge felt that as he had not seen his children since 2000, the strength of his family ties in the UK were weak. In addition, four of his children had been considered 'at risk' by social services due to the man's behaviour towards them and their mothers, so the judges felt they might be better off without him. In relation to the risk he posed to the wider community in the UK, this was felt to be very high as he had continued to commit crime even after his release from prison.

Source: <http://www.bailii.org/eu/cases/ECHR/2011/2253.html>

CASE 5: CLOSURE OF CARE HOMES

In this case the local authority was ordered to re-consider their decision to close the homes. The main human right involved in the case was Article 8: Right to privacy and family life, but the closure may also affect other rights such as Article 1 of the First Protocol: Right to enjoy possessions. Under the Human Rights Act, all public authorities have a duty to consider human rights in any decisions they make. The judge felt that in this case the local authority had not considered the rights of the old people in the care homes. The judge therefore ruled that the decision should be reviewed taking into account human rights concerns.

Source: *Human Rights Act Toolkit, J Watson and M Woolf, LAG 2008*

CASE 6: QUALITY OF LIFE FOR DISABLED YOUNG GIRLS

In this case the judge had to weigh up the girls' right to private and family life (Article 8) with the safety and health of the careworkers. The judge ruled in favour of the girls and said that the ban on lifting would have to be modified in order to allow the careworkers to do some safe lifting which would enable the girls to participate in the leisure and cultural activities which others could enjoy. (Article 14 is also relevant here in that the girls had a right not to be discriminated against because of their disabilities.) The judge also mentioned that the refusal to lift the girls could have an impact on their rights under Articles 2 or 3, if they fell and were forced to remain in an unsafe or embarrassing situation.

EXTENSION/HOMEWORK ACTIVITY – TWO SIDES TO EVERY STORY

Note: Both pieces are extracts from longer articles.

You can read the full *Daily Mail* article at <http://www.dailymail.co.uk/news/article-1221353/Youve-got-cat-OK-stay-Britain-officials-tell-Bolivian-immigrant.html>

You can read the full *Guardian* article at <http://www.guardian.co.uk/commentisfree/2011/oct/04/theresa-may-cat-human-rights-act>

POINTS TO DISCUSS

The facts are presented differently in each article because the author at the *Daily Mail* is against the Human Rights Act and the author at the *Guardian* is in favour of the Act.

Is it right that newspapers hold a view on political issues or should they be independent?

Different techniques are used to get the point across. Both articles use humour. The *Daily Mail* uses shorter sentences and less complicated language, and uses quotes from important-sounding people.

Which article do the students think is most effective?