



SESSION PLAN

ACTIVITY 3: THE RIGHT TO PRIVACY

An activity designed for students aged 14-18.

INTRODUCTION

This activity examines the circumstances in which there will be an interference with the right to privacy through a debate.

LEARNING OBJECTIVES

- To recognise Article 8 (the right to respect for private and family life) and Article 10 (freedom of expression) of the European Convention on Human Rights.
- To evaluate the circumstances in which an interference with the right to privacy could be justified.
- To discuss what happens when qualified rights conflict with each other.

RESOURCES

- Copies of the scenario hand out

STARTER

Explain the content of Articles 8 and 10 as outlined on page 3. Explain that Article 8(1) sets out the right to privacy while Article 8(2) sets out the circumstances in which the right may be interfered with lawfully.

Explain that when assessing if the interference was 'necessary in a democratic society', the court will determine whether the actions constituting the interference are proportionate to the legitimate aim which the actions seek to achieve.

MAIN

Group preparation: Split the students into pairs of smaller groups called Group A or Group B. Ideally you should aim for 3 or 4 pairs of groups, but the main requirement is that there is the same number of Groups A and of Groups B so that they can debate against each other.

Provide every group with the scenario sheet and allocate the role of the famous actress to Groups A and the role of the newspaper editor to Groups B.

Explain that the groups will have 10 minutes to discuss the scenarios and put together an argument supporting their client. Each group should nominate a speaker who will present their client's case in the mini moot.

Groups A should put forward arguments supporting the actress and arguing that:

1. Her right to privacy has been interfered with
2. The interference with her right to privacy was not justifiable

Groups B should put forward arguments supporting the newspaper editor's publication of the article and arguing that:

1. The actress' right to privacy has not been interfered with
2. If there has been an interference with the actress' right to privacy, why that interference was justified

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MAIN (continued)

Mini moot: Each Group A should be paired up against a Group B.

The speaker nominated by each group has 1 minute to argue the case for their client in front of the class, addressing the issues of whether there has been an interference with the right to privacy and whether any interference is justified or not. They should give reasons for their position.

You should also give each speaker a 30 second right of reply to address points raised by the other side. To ensure that more people get the chance to participate fully in the activity, the right of reply could be given to someone in the group who did not put forward the original argument.

You could also pretend to be the judge and deliver your judgment once the groups have presented their cases. You could also set up the chairs in the room to mimic a courtroom.



Please note: A free-standing claim under the Human Rights Act can only be brought against an individual or organisation exercising public functions. Because a newspaper is usually a private commercial company, it would not be subject to the Human Rights Act. However, the UK courts are public authorities exercising public functions and so are required to guarantee the rights protected by the Human Rights Act and may need to balance the rights of the claimant and defendant when adjudicating on a case. You should explain to Groups A and B that in this specific example Neave will have to bring a claim using tort law or the Data Protection Act rather than the Human Rights Act, and then it is the court when ruling on the claim which will consider and balance her right to privacy and the newspaper's freedom of expression.

DISCUSSION

Using the answer sheet, provide them further information on the real life scenario on which the scenario is based and the conclusion that the courts came to in deciding whether Naomi Campbell's privacy had been interfered with and whether that interference was justified.

You may wish to ask the class if they agree with the court's decision, its reasoning and the practical issues arising from the cases (these are set out in the volunteer answer sheet).

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FURTHER DISCUSSION

- On what ground was the interference necessary in a democratic society (the protection of the rights and freedoms of others)?
- Was the photographer right to have argued that it was necessary for the protection of the rights and freedoms of others that they could publish the story? This could facilitate discussion of how far freedom of expression should extend. For example, should we allow hate speech or publications which invade the privacy of others?
- Did the court strike the right balance in finding that the Article 8 right to privacy of Ms Campbell was to be given preference over the Article 10 freedom of expression of the newspaper?
- Do you think the content of the article the newspaper published made a difference? For example, if the story was less concerned with very private aspects of Ms Campbell's life and was instead more 'in the public interest', might the balance have been struck differently?
- Did the public have the right to know about the actress' private issues on account of her anti-drug campaign, was the publication of the story sufficiently in the public interest?
- What sort of factors should a court consider when deciding whether an interference is 'necessary in a democratic society'? [The court will consider whether the interference was a proportionate measure to take. There could be a difference in proportionality between just printing the story or printing it along with the photograph.]
- Should celebrities be entitled to the same level of privacy as non-celebrities? What about celebrities that open up their private lives to press attention e.g. 'Hello' magazine photoshoots in their home with their families? [One of the judges in the Naomi Campbell case, Baroness Hale, said that in terms of the extent of the protection granted by Article 8, it is irrelevant whether the claimant is a 'public figure' or a 'role model', or has sought publicity in the past and is therefore to be regarded as fair game for the media]
- Should the family of celebrities also expect some media intrusion into their family lives? JK Rowling brought a case against a newspaper claiming that its publication of a photo of her in public with her son was a breach of his Article 8 rights. The Court of Appeal held that this was an intrusion and her son was entitled to a reasonable expectation of privacy.
- In what circumstances might uninvited press invasion be justified/proportionate? When can press invasion into aspects of an individual's private life be acceptable and not considered to be a breach of their right to privacy? Does wrongdoing or improper behaviour on the part of an individual who holds themselves out publicly to be otherwise mean that press scrutiny is proportionate?

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THE LEGISLATION

You may wish to draw the following table on the board for the students to refer to when carrying out the activity. The table sets out the Article 8(2) conditions that the interference must comply with in order to be a legal and justified interference.

ARTICLE 8(2) conditions	
a) LEGAL	b) NECESSARY IN A DEMOCRATIC SOCIETY
<p>This means the interference must not be illegal and the action must be justified by reference to a source of law such as a statute, regulations or case law.</p>	<p>This means that the interference must be necessary on one of the following grounds:</p> <ul style="list-style-type: none"> • In the interests of national security; • In the interests of public safety; • In the interests of the economic wellbeing of the country; • For the protection of health or morals; • For the protection of the rights and freedoms of others [this allows different qualified rights in the Convention to be balanced against each other when they conflict]. <p>"Necessary in a democratic society" also requires that the interference must be proportionate to the aims set out above. This means that the interference must be no more than what is necessary to achieve, for example, the protection of health, and cannot go beyond that.</p>

Relevant Articles of The European Convention On Human Rights

Article 8: Right to respect for private and family life

1. *"Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the protection of health or morals, or for the protection of the rights and freedoms of others".*

Article 10: Freedom of expression

1. *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".*

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ANSWER SHEET

The groups representing the actress may put forward some of the following arguments:

- **Interference?**
 - Drug rehabilitation is a private matter
 - The meeting was in a private place
 - Medical treatment should be confidential
- **Was the interference justified?**
 - It was not in the public interest to publish photo with the article about the actress' drug addiction. The publication of the photo was unnecessarily invasive of the actress' private life; the newspaper could have printed the story without the photo
 - Publishing the details of the treatment the actress was receiving was particularly invasive and unjustified

The groups representing the newspaper may put forward some of the following arguments:

- **Interference?**
 - The picture was taken in public (as she was leaving the clinic)
 - The actress has already put her private life in the public domain
- **Was the interference justified?**
 - The newspaper has the right to freedom of expression and not being able to publish the photo would breach its right. Therefore, the interference is necessary to protect the rights and freedoms of others
 - The public have a right to know about the actress' drug addiction given her high profile anti-drugs campaign. In these circumstances the balance should be struck in favour of the newspaper and the right to freedom of expression

This case study is based on the House of Lords judgement of *Campbell v MGN Limited*¹. In this case the famous model Naomi Campbell was photographed leaving a drug rehabilitation clinic. At the time she was photographed, she had taken a very public anti-drugs stance. Ms Campbell took the Mirror newspaper to court claiming breach of confidence and that she was entitled to damages under the Data Protection Act after the newspaper published the photo along with a story about her drug addiction. In deciding this claim, the Court was required by section 6 of the Human Rights Act to respect Ms Campbell's right to a private and family life under Article 8.

The court held that:

1. **Was There An Interference:** Yes; the subject matter concerned Ms Campbell's private life.
2. **Was The Interference Justified:** No; it was particularly the publication of the photo of Ms Campbell with the article that was considered not to be justifiable. However, the publication of details of the treatment she had been receiving was also considered to be unjustifiable.

The court was split on whether there had been a breach of Ms Campbell's right to privacy with a judge in the minority arguing that Ms Campbell's very public anti-drugs stance meant that the paper should be allowed to correct this apparently false impression. Therefore, there is scope for debate on how the balance between the right to privacy and the right to freedom of expression should be struck.

¹ *Campbell v MGN Limited* [2004] UKHL 22