

IN THE COURT OF APPEAL:
BETWEEN:

Benjamin Jones

V

Good Story Media and Others

Problem Question 2020

Facts

Benjamin Jones (49) and Peggy Smith (48) are animal rights activists. In September 2019 they were arrested and charged under section 15 of the Terrorism Act 2000 for raising money with the intention that it be used for the purposes of terrorism. They had allegedly been gathering money in support of animal welfare but the Crown claims that it was being used to fund the Animal Liberation Front, a group that engages in terrorist activity. Peggy Smith escaped to Europe but was caught and will be returned to England through a European arrest warrant. Meanwhile the trial of Benjamin Jones will go ahead.

In the Crown Court (in first instance)

At a preliminary hearing, before Justice O'Hannigan, concerning Benjamin Jones the judge ordered under Section 4 of the Contempt of Court Act 1981 that there may be no reporting of the trial until the completion of Peggy Smith's trial on the grounds that media attention any earlier would risk prejudicing a jury against her and thus making a fair trial impossible.

There was significant media interest in this trial and several local newspaper groups sought to appeal the order under Section 159 of the Criminal Justice Act 1988 on the grounds that it was in the public interest that contemporaneous

reporting should be permitted.

In making this decision Justice O'Hannagan relied on the case of *R v Telegraph Group and Others* [2001] EWCA Crim 1075. In that case the following test was set out at 22:

'(1) The first question is whether reporting would give rise to a 'not insubstantial' risk of prejudice to the administration of justice in the relevant proceedings. If not, that will be the end of the matter.

*(2) If such a risk is perceived to exist, then the second question arises: would a s.4(2) order eliminate it? If not, obviously there could be no necessity to impose such a ban. Again, that would be the end of the matter. On the other hand, even if the judge is satisfied that an order would achieve the objective, he or she would still have to consider whether the risk could satisfactorily be overcome by some less restrictive means. If so, it could not be said to be 'necessary' to take the more drastic approach: see *Re Central Independent Television Plc.* [1991] 1 W.L.R. 4, 8D-G (per Lord Lane C.J.).*

*(3) Suppose that the judge concludes that there is indeed no other way of eliminating the perceived risk of prejudice; it still does not follow necessarily that an order has to be made. The judge may still have to ask whether the degree of risk contemplated should be regarded as tolerable in the sense of being 'the lesser of two evils'. It is at this stage that value judgments may have to be made as to the priority between 'competing public interests': see *Ex parte The Telegraph Plc.* [1993] 1 W.L.R. 980, 986B-C.'*

O'Hannagan concluded that the public interest in contemporaneous reporting was overridden by the need of avoiding a biased jury. He said that the interest in the papers was such that it would be impossible to hold a trial without unbalanced publication by the media resulting in jury bias.

Grounds of Appeal

1. You have been instructed by the media to appeal on one of the following three grounds;
 - a. That the reporting of the trial would not give rise to a "not insubstantial risk of prejudice to the administration of justice";
 - b. That the ban would not reduce the risk. Speculation

- based on the knowledge that the act has happened is worse than contemporaneous reporting; or,
- c. The public interest in contemporaneous reporting is of more importance than the risk to the article 6 rights of the other defendant.

The court has indicated it will be willing to hear five minutes of submissions and will then retire to consider judgment.

Instructions to Mooters

1. Introduce yourself and for whom you appear.
2. Briefly surmise the facts and what you are appealing.
3. Advance one of the three submissions.