

Re B (A Child) [2013] UKSC 33 – Who Held What table

	Meaning of “significant harm”	Article 8 and crossing the threshold	Article 8 and making of care order	Role of character of parents	Article 8 and adoption orders	Proportionality and the Court of Appeal	Court of Appeal and crossing the threshold	Court of Appeal and making a care order
Lord Wilson	Court should avoid attempting to explain “significant” [26]	No interference with Art 8 when judge concludes that threshold crossed [29]	Interference with Art 8 when care order made [29]	Character of parents relevant to each stage of the inquiry whether to make care order [31]	High degree of justification required to make adoption order [34]	Court of Appeal does not need to make a ‘fresh’ determination of proportionality [35] – [37] but should review the exercise as an appellate court	Whether the decision was “wrong” [44] (noting advantages of the trial judge at [41] – [43])	Whether the decision was “wrong” [45] - [47]
Lord Neuberger	Not helpful to expand on meaning, save to note that it is interrelated with likelihood, as per Lady Hale [56]	Art 8 has no part to play in whether threshold crossed [62]	Art 8 very much in play when making a care order [62]	Character would affect how child is “parented”, which could satisfy threshold [71]	Adoption order must be “necessary”. “Nothing else will do” [76] – [78]	Court of Appeal does not need to make a ‘fresh’ determination of proportionality [83] – [90] but should review the exercise as an appellate court	Whether the judge’s conclusion was “wrong” [91] (See also Lord Neuberger’s 7 categories at [93] – [94] in relation chiefly to proportionality)	Whether the judge’s conclusion was “wrong” [91] (does not distinguish between appeals in relation to threshold and care orders) (See also Lord Neuberger’s 7 categories at [93] – [94])
Lord Kerr	It is a judgment made on the facts found [109]	Unnecessary layer of complexity to consider Art 8 at this stage [129]	Art 8 in “full flower at disposal stage” [130]	Dishonesty and antagonism made it impossible to sure that child would not suffer harm [132]	Very strict test: “nothing else will do”, “high degree of justification” needed [130]	Section 6 HRA requires Court of Appeal to make a ‘fresh’ determination of proportionality [116] – [127]	If appellate court thinks judge was “wrong” [110]	“The review by an appellate court is at its most benign... court should be slow to substitute its view of what is best required” [111] – [114]
Lord Clarke	Agrees with Lords Wilson, Neuberger and Kerr [134]	Agrees with Lords Wilson, Neuberger and Kerr [134]	Agrees with Lords Wilson, Neuberger and Kerr [134]	Agrees with Lords Wilson, Neuberger and Kerr [134]	“Only in a case of necessity will an adoption order be proportionate” [135]	Court of Appeal should approach as an appellate exercise, not a fresh determination [136]	Whether the judge was “wrong” [138] – [139] (Agrees with Lord Neuberger’s 7 categories [140])	Whether the judge was “wrong” [138] – [139] (does not distinguish between appeals in relation to threshold and care orders) (Agrees with Lord Neuberger’s 7 categories [140])

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<p>Lady Hale</p>	<p>“Considerable, noteworthy or important” [185] & [193(3)]; should not be set too low [186]; inverse relationship with likelihood [188].</p>	<p>Finding that threshold crossed does not interfere with Art 8 [186]</p>	<p>The court’s order interferes with Article 8 [186]</p>	<p>Threshold refers to parental care, not parental character [191] & [193(4)]</p>	<p>“Nothing else will do” [145] & [198]</p>	<p>Duty of the trial judge to assess proportionality, duty of appellate court to conduct the exercise afresh. [204] - [205]</p>	<p>“We all agree that an appellate court can interfere if satisfied that the judge was wrong” [145] & [203]</p>	<p>“We all agree that an appellate court can interfere if satisfied that the judge was wrong” [145] – But this involves an assessment of the proportionality of the order [205]</p>
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