2.8 Judicial Review and the Judiciary's Power Over Government: Test Pack

EDEXCEL 9PL0 · about 20 minutes

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. For levels-marked questions write well-structured, developed responses in full sentences and use accurate political knowledge.

1 Define judicial review in the context of UK public law and its function relative to Parliament and government.

(Total for Question 1 is 1 mark)

2 State the legal concept ultra vires and give one short example of its application in UK judicial review.

(Total for Question 2 is 2 marks)

3 List two conventional grounds on which UK courts grant judicial review applications.

(Total for Question 3 is 2 marks)

4 Explain the ground of procedural fairness, also called natural justice, as used by UK courts in judicial review.

(Total for Question 4 is 4 marks)

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5 Explain how UK courts can review the exercise of prerogative powers and give one short example of a prerogative subject to review.

(Total for Question 5 is 6 marks)

6 Explain the difference between the Wednesbury test of irrationality and the proportionality test used in human rights cases, in the context of UK judicial review.

(Total for Question 6 is 6 marks)

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Mark scheme · 2.8 Judicial Review and the Judiciary's Power Over Government: Test Pack

Question 1

a concise definition that judicial review is the courts examining the lawfulness of decisions or actions by public bodies, including ministers and government agencies	**B1**

Answer: The courts process by which judges examine whether decisions or actions by public bodies, including ministers and executive agencies, are lawful and consistent with statutory and common law duties.

Question 2

defines ultra vires as acting beyond the legal power or authority conferred on a public body	**B1**
gives one brief, accurate example, such as a local authority using a power for an unrelated purpose aoe	**B1**

Answer: Ultra vires means acting beyond the legal powers conferred on a public body. Example: if a council uses a planning power to reward political allies rather than to regulate land use, a court could rule the act ultra vires.

Question 3

one valid ground, e.g. illegality	**B1**
a second valid ground, e.g. procedural unfairness or irrationality (Wednesbury unreasonableness) or legitimate expectation	**B1**

Answer: Any two of: illegality (including ultra vires); procedural unfairness (breach of natural justice); irrationality or Wednesbury unreasonableness; legitimate expectation; proportionality in human rights cases.

Question 4

identifies main elements such as the right to a fair hearing and absence of bias	**B1**
explains that a breach can make a decision unlawful even if the result might have been the same	**B1**
provides a short development, e.g. duty to consult, to disclose material facts, or to avoid conflict of interest	**B1**
notes remedy outcome, e.g. quashing or remitting the decision	**B1**

Answer: Procedural fairness requires a fair hearing and decision made by an unbiased decision maker. A breach of this duty, for example failure to consult, nondisclosure of relevant material, or bias, can render a decision unlawful and open to quashing or remittal even if the substantive outcome might otherwise have been the same.

Question 5

explains that prerogative powers are not immune from judicial review where they affect rights or have legal consequences	**B1**
notes the courts will assess lawfulness, rationality or compatibility with parliamentary sovereignty	**B1**
identifies an example, e.g. prorogation, treaty making, or deployment of armed forces (deployment with caveat)	**B1**
develops the example briefly, e.g. prorogation 2019 was held unlawful because it frustrated Parliament	**B1**
explains limitation, e.g. some prerogative areas such as high policy choices may remain nonjusticiable	**B1**
gives brief consequence on executive power, e.g. creates a legal check though not a complete bar to prerogative use	**B1**

Answer: Prerogative powers can be subject to judicial review when their exercise affects legal rights or the constitutional functions of Parliament; the courts assess lawfulness, rationality and compatibility with parliamentary sovereignty. Example: prorogation was held unlawful in 2019 because it frustrated Parliament from carrying out its functions. Some high policy areas remain partly nonjusticiable, so review imposes an important legal check but does not eliminate executive discretion in all prerogative domains.

Question 6

states that Wednesbury unreasonableness asks whether a decision was so unreasonable that no reasonable authority could have made it	**B1**
states that proportionality requires a structured balancing test, e.g. legitimate aim, suitability, necessity and proportionality in the strict sense	**B1**
explains that Wednesbury is a high threshold leading to more judicial deference to executive choices	**B1**
explains that proportionality is more intensive and involves weighing competing rights and interests	**B1**
identifies that the HRA and European jurisprudence pushed UK courts to use proportionality in rights-based review	**B1**
gives brief consequence, e.g. more substantive review under proportionality can constrain executive policy more than Wednesbury	**B1**

Answer: Wednesbury unreasonableness asks whether a decision was so irrational that no reasonable public authority could have made it, a high threshold that preserves judicial deference. Proportionality, used in human rights cases, is a structured balancing test considering whether the interference pursues a legitimate aim, is suitable and necessary, and is proportionate in the strict sense. Proportionality requires more intensive judicial engagement and therefore can lead to a more substantive constraint on executive decision making than Wednesbury.

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