5.14 Comparative US/UK Judiciaries and Rights Protection: 30-minute Pack

EDEXCEL 9PL0 · about 30 minutes

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. For levels-marked questions write a well-structured, developed response using accurate political knowledge and comparative examples. Time guidance: 30 minutes total. At least two full-sentence answers are required for levels-marked questions.

1 Explain two effects of the Human Rights Act 1998 on UK courts ability to protect rights while Parliament remains sovereign.

(Total for Question 1 is 4 marks)

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2 Evaluate the extent to which the US Supreme Court is more powerful than the UK Supreme Court in protecting rights and checking the other branches of government.

(Total for Question 2 is 30 marks)

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Mark scheme · 5.14 Comparative US/UK Judiciaries and Rights Protection: 30-minute Pack

Question 1

identifies that UK courts must interpret legislation compatibly with Convention rights where possible under section 3 of the HRA	**B1**
explains that where compatibility is impossible courts may issue a declaration of incompatibility under section 4, leaving Parliament to decide whether and how to amend the law	**B1**
identifies that HRA brings Convention rights into domestic law, enabling individual remedies in UK courts	**B1**
explains that Parliamentary sovereignty remains because courts cannot strike down primary legislation, so ultimate legal change depends on political, not judicial, action	**B1**

Answer: Under the HRA 1998 courts must, where possible, interpret primary and subordinate legislation to be compatible with Convention rights; if that is not possible they may issue a declaration of incompatibility, allowing individuals to obtain remedies domestically while leaving Parliament to decide whether to change the law. This means rights are enforceable in UK courts but Parliament retains the final authority to amend statutes, preserving Parliamentary sovereignty.

Question 2

Level 1 Basic knowledge of one or both courts with little or no developed analysis or evaluation. Arguments are generalised and lack evidence or comparative focus.	**1-6**
Level 2 Clear knowledge of institutional differences and some developed analysis of how each court can protect rights and check branches. Evaluation is present but may be one-sided or rely on assertion rather than detailed evidence.	**7-12**
Level 3 Detailed, accurate knowledge used to build a balanced analysis comparing the courts powers and their effects on rights protection. Some reasoned evaluation and use of examples, though development may be uneven across AO1, AO2 and AO3.	**13-18**
Level 4 Sophisticated and well-supported analysis that integrates institutional detail, comparative implications and well-chosen examples. Evaluation weighs the strengths and limits of each court and reaches a supported judgement.	**19-24**
Level 5 Extensive, incisive knowledge and sustained evaluation across AO1, AO2 and AO3. The answer directly compares legal powers, political context and practical constraints, uses precise examples, anticipates counterarguments and reaches a clear, well-substantiated conclusion on the extent of the US Court's comparative power.	**25-30**

Indicative content:

- Institutional power: the US Supreme Court can invalidate federal and state statutes that violate the Constitution, giving it a direct legal mechanism to protect entrenched rights; the UK Supreme Court cannot strike down primary legislation and issues declarations of incompatibility under the HRA 1998.
- Entrenchment versus Parliamentary sovereignty: the US has a codified, entrenched Bill of Rights and amendment process that is difficult, strengthening judicial supremacy on constitutional questions; the UK operates under Parliamentary sovereignty so the court's findings often require political remedy.
- Appointment politics and legitimacy: US justices are nominated by the President and confirmed by the Senate, which can politicise appointments and affect perceptions of the Court, while the UK uses the JAC and a more technocratic route that can protect perceived independence at appointment.
- Practical constraints on power: US courts face limits such as standing, mootness, political question doctrine and reliance on executive compliance; the UK Court faces political constraints because Parliament can ignore or delay legislative responses and because the HRA can be repealed or amended by statute.
- Examples: US cases where the Court struck down statutes or executive actions provide immediate legal change, while UK cases producing declarations have required subsequent Parliamentary or ministerial action to change the law or policy, sometimes leading to incremental remedies.
- Democratic accountability and legitimacy trade-offs: US judicial supremacy protects minorities against majoritarian laws but may be seen as counter-majoritarian; the UK model preserves democratic supremacy of Parliament while giving courts an influential role in rights discourse and interpretation.
- Comparative judgement: conclude that the US Supreme Court is more legally powerful in the narrow sense of being able to strike down primary law and thereby directly enforce rights, but the UK Supreme Court can be politically influential and may secure change through dialogue with Parliament. The final judgement should weigh the legal immediacy of US invalidation against the democratic legitimacy and practical policy effects of UK judicial influence.
- Consider counterarguments: political backlash can limit the US Court's practical effect, and in crisis moments UK political institutions may respond rapidly; statutory contexts and constitutional cultures affect comparative outcomes.

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