5.14 Comparative US/UK Judiciaries and Rights Protection: Test Pack

EDEXCEL 9PL0 · about 15 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: 15 minutes total. At least two full-sentence answers are required for levels-marked questions.

1 Define the term 'judicial review' as it applies to the US Supreme Court in the context of the US Constitution.

(Total for Question 1 is 1 mark)

2 State two formal steps in the US appointment process for a Supreme Court justice, naming the actors involved.

(Total for Question 2 is 2 marks)

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3 Explain two ways in which high-profile confirmation battles in the US might affect public perceptions of the Supreme Court's legitimacy, and give one comparative consequence for the UK where judicial selection is less publicly adversarial.

(Total for Question 3 is 6 marks)

4 Explain the difference between strong-form judicial review and a system where courts issue declarations of incompatibility, using the US Supreme Court and the UK Supreme Court as the comparator institutions. In your comparison, explain the legal effects, the constitutional basis of each system and the consequences for rights protection.

(Total for Question 4 is 6 marks)

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Mark scheme · 5.14 Comparative US/UK Judiciaries and Rights Protection: Test Pack

Question 1

a concise definition that the US Supreme Court can declare federal or state laws invalid if they conflict with the US Constitution **B1**

Answer: The power of the US Supreme Court to declare federal or state laws and executive actions invalid when they conflict with the US Constitution.

Question 2

one accurate step, e.g. the President nominates a candidate for the Supreme Court **B1**

a second accurate step, e.g. the Senate Judiciary Committee holds confirmation hearings and the full Senate votes to confirm or reject **B1**

Answer: The President nominates a candidate for the US Supreme Court; the Senate, via Judiciary Committee hearings and then a full Senate confirmation vote, either confirms or rejects the nominee.

Question 3

identifies that media-centred confirmation battles can portray justices as partisan, undermining perceived impartiality **B1**

explains that such battles may lead the public to view the Court as an extension of political conflict rather than a neutral arbiter **B1**

identifies that contentious confirmations can increase polarisation and reduce trust in judicial decisions among the losing side **B1**

explains that the losing side may interpret subsequent rulings as partisan victories rather than authoritative legal judgements, weakening willingness to accept the Court's authority **B1**

gives one comparative consequence for the UK, e.g. selection overseen by an independent selection commission reduces public spectacle and can support a perception of judicial independence **B1**

explains that lower public contestation in the UK may mean the Supreme Court faces less acute short term legitimacy challenges, though political criticisms still occur **B1**

Answer: First, partisan confirmation battles can make the Court appear politically aligned, weakening perceived impartiality as the public may see it as an extension of political conflict rather than a neutral arbiter. Second, polarised battles can make supporters of the losing party distrust subsequent rulings as partisan victories, weakening acceptance of the Court's authority. Less publicly adversarial UK selection, overseen by an independent selection commission, can support perceived independence and reduce appointment-related legitimacy disputes, although political criticisms of decisions still occur.

Question 4

identifies strong-form judicial review as the power to strike down primary legislation for constitutional incompatibility **B1**

identifies declaration of incompatibility as a non-invalidating finding that notifies Parliament of conflict with Convention rights **B1**

explains that US constitutional supremacy means ordinary legislation must give way to the higher law of the Constitution **B1**

explains that a UK declaration preserves parliamentary sovereignty because the statute remains valid and enforceable **B1**

explains that Parliament decides whether and how to change the incompatible statute; a declaration does not compel amendment **B1**

explains a comparative consequence for rights protection: US invalidation directly prevents application of the unconstitutional law, whereas a UK declaration alone leaves the incompatible statute in force pending a political response **B1**

Answer: Strong-form judicial review allows the US Supreme Court to invalidate legislation that conflicts with the Constitution. This reflects constitutional supremacy: ordinary legislation must give way to the higher law of the Constitution. A UK Supreme Court declaration of incompatibility under the Human Rights Act 1998 identifies a conflict with Convention rights but does not invalidate the statute, which remains valid and enforceable. This preserves parliamentary sovereignty. Parliament decides whether and how to change the incompatible statute and is not compelled by the declaration to amend it. The consequence for rights protection is that US invalidation directly prevents application of the unconstitutional law, whereas a UK declaration alone leaves the incompatible statute in force pending a political response, so a legislative remedy may be delayed or absent.

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