5.14 Comparative US/UK Judiciaries and Rights Protection

EDEXCEL 9PL0 · about 55 minutes · Write-in edition

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: 55 minutes total. At least two full-sentence answers are required for levels-marked questions.

1 Define a 'declaration of incompatibility' under the Human Rights Act 1998 in the context of the UK Supreme Court and Parliament's sovereignty.

(Total for Question 1 is 1 mark)

2 State two features of the UK process for selecting senior judges via the Judicial Appointments Commission (JAC).

(Total for Question 2 is 2 marks)

3 Explain two consequences of the US Constitution being entrenched for the Supreme Court's power to protect rights, in the US context.

(Total for Question 3 is 3 marks)

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

(Total for Question 4 is 4 marks)

5 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 5 is 30 marks)

6 Explain two ways in which the US Senate confirmation process can politicise appointments to the US Supreme Court, in contrast to UK Supreme Court selection overseen by an independent selection commission.

(Total for Question 6 is 4 marks)

7 Using the source below, analyse the similarities and/or differences in how the US Supreme Court and the UK Supreme Court can check the other branches of government.

Extract A, from a US legal commentator, 2021: "The US Supreme Court, armed with the written Constitution and the doctrine of judicial review, can nullify legislative acts and executive actions that exceed constitutional bounds. That power makes it a direct counterweight to both Congress and the Presidency, particularly on matters of individual rights guaranteed by the Constitution."

Extract B, from a UK constitutional scholar, 2020: "The UK Supreme Court lacks power to strike down primary legislation. Its most potent tools are interpretative rulings under the Human Rights Act and declarations of incompatibility. These mechanisms check government policy and inform Parliament and public debate but leave the final decision on statutes with elected representatives."

Using these extracts and your knowledge of comparative institutions, analyse the similarities and differences in the courts checks on the other branches. Refer to the extracts in your answer.

(Total for Question 7 is 12 marks)

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

Question 1

identifies that a declaration is a court statement that primary legislation is incompatible with the European Convention on Human Rights, without striking the law down **B1**

Answer: A declaration of incompatibility is a judgment by a UK court that an Act of Parliament is incompatible with the European Convention on Human Rights as incorporated by the Human Rights Act 1998; it does not nullify the statute, leaving remedy to Parliament.

Question 2

one accurate feature, e.g. open competition and merit-based selection managed by the JAC **B1**

a second accurate feature, e.g. the JAC recommends candidates to the Lord Chancellor, who can accept or ask for reconsideration within a short period **B1**

Answer: The Judicial Appointments Commission runs open, merit-based selection exercises for senior judicial posts; it recommends suitable candidates to the Lord Chancellor, who may accept the recommendation or ask the JAC to reconsider within a limited period.

Question 3

identifies that entrenchment means rights are written and difficult to change by ordinary legislation **B1**

explains that this enables the Court to strike down statutes that violate constitutional rights, giving the judiciary a strong check on the legislature **B1**

explains that entrenchment increases stability and predictability of rights protection, but can also provoke political conflict when the Court interprets broad constitutional clauses **B1**

Answer: Entrenchment means constitutional rights are written and cannot be altered by ordinary statute, which allows the US Supreme Court to strike down laws that breach those rights and so act as a strong check on the legislature; this produces stability and predictability in rights protection, but it can also generate political controversy when the Court interprets broad constitutional provisions.

Question 4

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 5

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.

Question 6

identifies that public Senate hearings scrutinise nominees' judicial philosophy and likely rulings	**B1**
explains that this can turn assessment of a nominee into an ideological contest over future decisions on politically disputed issues	**B1**
identifies that Senators can cast party-driven confirmation votes rather than judging a nominee solely on legal qualifications	**B1**
explains that a Senate majority can block an opposing President's nominee or secure a politically preferred nominee, making appointment depend on party control	**B1**

Answer: First, public Senate hearings scrutinise nominees' judicial philosophy and likely rulings. This can turn selection into an ideological contest over future decisions on politically disputed issues. Second, Senators can cast party-driven confirmation votes: a Senate majority can block an opposing President's nominee or secure a politically preferred nominee, so party control can shape who reaches the Court. UK Supreme Court selection is overseen by an independent selection commission rather than a Senate-style confirmation process.

Question 7

Level 1 Basic, limited use of the extracts and general factual statements about one or both courts, with little developed analysis of how they check other branches.	**1-3**
Level 2 Clear use of both extracts and some accurate explanation of similarities and differences in powers to check the legislature and executive, but analysis may be descriptive rather than analytical.	**4-6**
Level 3 Good analysis using the extracts to explain how each court checks other branches, drawing on comparative institutional detail and showing the implications for rights protection and separation of powers.	**7-9**
Level 4 Detailed, well-focused analysis that evaluates the extent of the similarities and differences, integrates the extracts with wider knowledge, and reaches a clear, supported conclusion about the nature and limits of each court's checking powers.	**10-12**

Indicative content:

- Reference to Extract A: US Court can nullify legislative and executive acts via judicial review, giving a direct legal counterweight to both Congress and the Presidency.
- Reference to Extract B: UK Court cannot strike down primary legislation and relies on interpretation and declarations of incompatibility under the HRA, leaving final statutory change to Parliament.
- Similarity: both courts can constrain executive action by ruling that particular executive acts exceed legal or constitutional powers, thereby shaping executive behaviour.
- Difference: the US Court has the power to produce immediate, binding invalidation of statutes, whereas the UK Court's declarations prompt political remedies rather than automatic legal change.
- Implication for rights: the US model can provide stronger immediate protection for entrenched rights, while the UK model depends on parliamentary or ministerial action to secure remedies, affecting speed and certainty of rights protection.
- Political consequences: US judicial invalidation can provoke strong political backlash and constitutional debate, whereas UK declarations tend to produce parliamentary debate and possible legislative amendment, reflecting different democratic checks.
- Practical limits: both courts face constraints, including the US Court's limitations of standing, justiciability, and the need for cases to reach it, and the UK Court's reliance on Parliament and the political will to amend laws after declarations.
- Balanced judgement: conclude that the US Supreme Court exercises a more legally direct check on other branches through invalidation, while the UK Supreme Court exerts an influential but politically mediated check through interpretation and declarations, with strengths and weaknesses on both sides.