

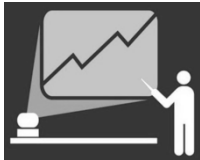
How do the courts protect my rights?



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Edited by Dr Peter Jepson
Read & Précis: Chapter 4, Issue 2, pages 175-204

Welcome

- Ensure mobile phones are off
- No eating in the classroom
- You should take notes/annotate Pdf print files



Topic Aims

- The role of the courts.
- The courts and the Human Rights Act.
- Judicial Review.



The role of the courts

- American legal academic Roscoe Pound divided interests into categories:
 - 1) Individual interests – such as owning property, making contracts and having personal privacy.
 - 2) Social interests – such as protecting the security of the state, conserving resources and promoting public morality.

The role of the courts

- Pound argued that an interest could only be balanced against another interest in the same category.

Example: Miller v Jackson (1977)



- Do you agree with the decision?
- Are the interests of the individual more important than society?

The judicial process

- Our courts have a strict hierarchy - **copy the diagram on page 179.**
- Points of law decided in past cases are followed by judges in later cases. This is known as... *stare decisis*.
- Decisions made by courts are usually **binding** on courts below them (the doctrine of precedent).
- What are the advantages and disadvantages of such a system?

The judicial process

- Rigidity of following past decisions can be avoided as judgments can be overruled by superior courts and/or Parliament can legislate.
- Copy out the advantages and disadvantages of precedent on page 181.



The judicial process

- If Parliament has legislated, the courts must follow it. However, courts often have to interpret a statute before reaching a decision. **Why might this be?**
- A judge has a choice in how they choose to interpret, taking a **literal** or even a **purposive** approach.
- Answer **Activity 4** on page 183.



The powers of the courts

- In small groups, research and present...
Group 1: The different orders that can be made in civil cases.
Group 2: The different sentences that can be passed in criminal cases.



The Human Rights Act

- Before the introduction of the HRA, what was the position in the UK? See A v UK Government (1999).
- Under the HRA, who can a claim be made against?
- Where can a citizen take their claim?

The Human Rights Act

Contrast the following case and attitude of our courts before the HRA was passed...

- Hill v Chief Constable of West Yorkshire (1989)
...with a similar issue of public policy following the passage of the HRA.
- Osman v UK (1999)
However, the HRA has been interpreted to apply to individuals...
- Douglas v Hello (2001)

Judicial Review

The High Court has the power of judicial review to oversee the decisions of public bodies and officials such as:

- Inferior courts and tribunals.
 - Local councils, Welsh Assembly and ?.
 - Members of the executive.
- Exercised by two more or judges of the QBD of the High Court.
- To make an application, a citizen must have *locus standi*. **What does this mean?**

Judicial Review

A decision can be challenged by judicial review on three grounds:

- 1) A public body makes a decision *ultra vires*.
 - *Substantive ultra vires*: A-G v Fulham Corp. (1921)
 - *Procedural ultra vires*: Aylesbury Mushrooms Ltd (1972)
- What is the difference between the two?

Judicial Review

2) A public body makes a decision that is unreasonable.

- What is 'unreasonable'?
- A decision is unreasonable if no reasonable public body could have reached the same decision (see the 'Wednesbury Principle').
- What examples of unreasonableness can you find?

Judicial Review

3) A public body makes a decision that is in breach of natural justice.

This important legal principle states:

- No one should be a judge in their own case.
- Both sides have a right to be heard.
- What is this rule trying to prevent?
- What was wrong in the Pinochet Ugarte (No.2) [1999] case?

Judicial Review

- In pairs, **list** the:
 - 1) The remedies available through judicial review.
 - 2) Criticisms of the judicial review process with illustrating examples.

Be prepared to share with the class.

Just to remind you...

- For the Unit 1 exam, you should be able to **know, understand and discuss**:
 - The judicial process.
 - Impact of the HRA 1998.
 - Judicial review.
