Substantive grounds of judicial review

Introduction

JR to maintain rule of law/ protect sovereignty Parliament
Substantive grounds re content; procedural re process
Exist mostly at common law; court can add/amend

1. Illegality

core meaning and sub-meanings

1.1 Excess of power/'four corners'

Power does not exist: 'houses not hospitals'; 'teachers not nurses'.

Entick v Carrington no statute; no common law
Northumbria Police Court may find 'lost/forgotten' prerogative powers

Importance of rules of statutory interpretation

Different techniques (or even same technique) >>> different result

Literalism

Roberts v Hopwood (HoL) >>> contrast >>> (CoA)
Laski (1925) Harvard LR >>> echoed >>> Fennell (1986) JoLS

Liversidge v Anderson (HoL) >>> contrast >>> Alkin dissent

Anisiminic (HoL) >>> contrast >>> Salmon dissent

Literalism - incidental powers

AG v Fulham Corp municipal bath house; subsidized laundry
Akumah v LB Hackney car parking regulation within housing management
1. Golden rule

**Padfield v MAFF** (HoL) >>> contrast >>> Morris dissent

1.2 Improper purpose

**Congreve v Home Office** tv licence increase

1.3 Non-delegation

**Ellis v Dubowski** movie licensing

**Allingham v Min of Ag** delagatus non potest delgare (!)

**Barnd v NDLB** administrative convenience cannot justify

**Carltona** different considerations for Minister; alter ego principle

1.4 No fettering >>> estoppel

**British Oxygen v DoT**

**Hulkin v Min of Ag** not if ultra vires

**Lever Finance** ok if intra vires

**Western Fish** maybe if intra vires

1.5 Directly effective EC law

statutory source for JR > unusual

Autonomous effect EC law or **ECA 1972 s.2-3**; Treaty articles/secondary legislation

Only situation where JR invoked 'against Parliament' >>>>> **Factortame 2**

1.6 Convention rights

statutory source for JR > unusual

Breach convention right triggers

a) 'Re-interpretation' per s.3 if statutory power; or
b) Declaration of incompatibility per s.4 if statutory power; or
c) Develop common law per s.6 if common law issue
2. Irrationality

\[ \text{Wednesbury} \quad \text{(Lord Greene)} \quad \text{so absurd non-one could dream} \]

\[ \text{GCHQ} \quad \text{(Lord Diplock)} \quad \text{so outrageous in defiance of logic/ morality} \]

2.1 Sub-head

\[ \text{Roberts v Hopwood} \quad \text{(HoL)} \quad \text{eccentric principles socialism/feminism} \]

Does this bring courts too close to merits ? Separation of powers problem?

3. Proportionality

3.1 As indigenous principle

\[ \text{Jowell and Lester (1988) in New directions in jr} \quad \text{irrationality too loose a standard ?} \]

\[ \text{more intensive review enhance rule of law} \]

Is proportionality too like appeal ?

\[ \text{Brand v Home Secretary} \quad \text{Smith v Defence Secretary} \quad \text{} \}

\[ \text{Court must not use jr to decide merits} \]

Is it already here – but disguised ?

\[ \text{Barnsley, ex parte Hook} \quad \text{peeing in streets} \]

\[ \text{Wheeler v Leicester CC} \quad \text{rugby to South Africa} \]

3.2 As EC law

\[ \text{requires proportionality} \quad \text{meaning intense} \]

\[ \text{Bela-Muhle v Grows Farm} \quad \text{skimmed milk cost} \]

\[ \text{Watson and Belman} \quad \text{ID cards for workers} \]

3.3 As HRA 1998

\[ \text{requires proportionality} \quad \text{meaning variable} \]

\[ \text{Daly >>> contrast … Alconbury} \]

Conclusion/links

\[ \text{increasingly red light common law >> link >>} \]

\[ \text{more intensive review; cf Mustill in FBU} \]

\[ \text{loosen standing test} \]

\[ \text{additional statutory grounds} \]