17. Irrationality and Proportionality

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Lisa Webley and Harriet Samuels

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Author(s): Lisa Webley and Harriet Samuels

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Titles in the Complete series combine extracts from a wide range of primary materials with clear explanatory text to provide readers with a complete introductory resource. This chapter, which discusses the circumstances for judicial review of a public authority’s decision on the grounds that it is irrational, first explains the history of irrationality and ‘Wednesbury unreasonableness’, to provide some background to the topic and to chart its development. It then considers cases in which the courts have discussed different versions of the irrationality test, discusses the difference between irrationality and proportionality, and examines the development of proportionality and its use in judicial review cases. The chapter distinguishes between proportionality and merits review, and discusses the use of judicial deference by the courts. Proportionality, and not irrationality, is the test used to determine whether a public authority has acted unlawfully when its decision is challenged by judicial review under section 6 of the Human Rights Act 1998. The irrationality test is used in non Human Rights Act judicial review cases but the courts have also used the proportionality test in cases involving common law rights.
The chapter concludes by considering the discussion in the case law and the scholarship as to whether the irrationality test should be replaced by the test of proportionality across both types of case: traditional judicial review cases and those involving a human rights issue.