

Master issue spotting table

Potential Issue	Relevant Ground(s) of Review	Overlap With Other Grounds
DM failed to consider a key factual or legal matter	Failure to consider relevant consideration (s 5(2)(b)); <i>Peko-Wallsend, Tickner</i>	May overlap with unreasonableness (process); error of law if duty is statutory
DM relied on a legally irrelevant matter	Irrelevant consideration (s 5(2)(a)); <i>Murphyores</i>	Unreasonableness (process); error of law
Decision based on a fact that did not exist	No evidence – fact did not exist (s 5(3)(b)); <i>Bond, Curragh</i>	Jurisdictional fact; error of law
No evidence supported a critical factual finding	No evidence – no supporting material (s 5(1)(h)); <i>Rajalingam, Curragh</i>	Jurisdictional error; unreasonableness (outcome)
Outcome so irrational or bizarre it defies logic	Unreasonableness (Wednesbury narrow); <i>Li</i>	Bad faith (if extreme); improper purpose (if outcome linked to ulterior aim)
Decision lacks intelligible or justified reasoning	Unreasonableness (Li – intelligible justification); <i>Li, Eden</i>	Error of law (if legal logic is missing); no evidence (if factual basis is absent)
Power used for a purpose outside the Act's scope	Improper/Unauthorised purpose (s 5(2)(c)); <i>Schlieske, Toohey</i>	Bad faith (if deliberate); unreasonableness
Fraud by third party or in application	Fraud (s 5(1)(g)); <i>SZFDE, DUA16</i>	Jurisdictional error; breach of natural justice (if deception misled the DM)
DM acted in bad faith (bias, dishonest motive, etc.)	Bad faith (s 5(2)(d)); <i>SBAN</i>	Improper purpose; unreasonableness; procedural fairness (bias)
DM misunderstood or misapplied statute	Error of law (s 5(1)(f)); <i>Craig, Agfa-Gevaert</i>	Jurisdictional error; unreasonableness (if interpretation defies logic)
Statutory condition precedent misunderstood or unmet	Jurisdictional fact (s 5(3)(a)); <i>M70, Craig</i>	No evidence; error of law
Statute includes a privative clause or seeks to prevent review	Jurisdictional error + constitutional review (s 75(v)); <i>Plaintiff S157, Kirk</i>	All grounds preserved via s 75(v) if jurisdictional error shown
Decision rushed or showed no genuine engagement with material	Unreasonableness + relevant consideration; <i>Carrascalao</i>	Procedural fairness; no evidence (if factual material not read at all)
Minister/DM improperly delegated required personal consideration	Relevant consideration/improper delegation; <i>Tickner</i>	Procedural unfairness; error of law
Tribunal or inferior court exceeded the limits of its statutory authority	Jurisdictional error; <i>Craig, Kirk</i>	Error of law; no evidence or irrelevant consideration (if reasoning was flawed)
Statutorily required matters overlooked	Relevant consideration (s 5(2)(b)); <i>Peko-Wallsend, Tickner</i>	Jurisdictional error (if critical); unreasonableness

Decision overly influenced by extraneous, biased or immaterial factors	Irrelevant consideration; <i>Murphy v. Oakes</i>	Bad faith; improper purpose; unreasonableness
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UNREASONABLENESS

Case	Key Principle	Use in Exam
<i>Wednesbury</i>	No reasonable authority could have made this decision	Start with this as the traditional test
<i>Li (2013)</i>	Broader test: decision lacks evident and intelligible justification	Use this for modern understanding; broader application
<i>Carrascalao</i>	No active intellectual process → failure of genuine consideration	Argue process-based unreasonableness
<i>Eden</i>	Describes indicia like “plainly unjust”, “capricious”, “arbitrary”	Use these phrases to characterise unreasonable decisions
<i>Kruger (Brennan CJ)</i>	Statutory discretion must be exercised reasonably	Good quote to open legal discussion
<i>Gageler J in Li</i>	Reasonableness applies to both outcome and method	Great for nuanced discussion or distinction

Issue spotting:

1. Is the power conferred discretionary?
 - Look for facts suggesting either a wide discretion or one constrained by express or implied limits (subject-matter, purpose, scope).

“The court must interpret the statute to determine whether the decision-maker acted beyond the bounds of reasonableness intended by Parliament” (Li).

“The discretionary power conferred by s [X] must be exercised within a framework of rationality implied by the subject-matter, scope and purpose of the statute (Li).”

2. Is there a suggestion of arbitrariness or irrationality?
 - Sudden, unexplained reversals of decision.
 - Decisions made extremely quickly (e.g. Carrascalao – 4 hours to cancel visas).
 - Ignoring key evidence or giving it bizarre weight.
 - Decisions that seem obviously disproportionate (e.g. taking a sledgehammer to crack a nut – Li).
3. Was the decision justified, transparent and intelligible?
 - Evidence of justification (reasons, findings, links to facts).
 - Evidence of intelligibility (can you follow the logic?).
 - Absence of either may suggest legal unreasonableness (Li, Eden).
4. Could other errors also be at play?
 - Unreasonableness often overlaps with:
 - i. Taking into account irrelevant considerations.
 - ii. Failing to consider mandatory relevant considerations.
 - iii. Improper purpose or bad faith.
 - If so, spot these as cumulative or alternative arguments.

5. Are courts likely to intervene?

- Unreasonableness must fall outside the range of lawful outcomes (Eden).
- Courts are especially likely to intervene where:
 - i. Human rights are affected (Innes, Owen-D'Arcy).
 - ii. The effect is plainly unjust, arbitrary, capricious, or lacking intelligible justification.

Unreasonableness problem structure:

The discretion conferred under **s [X]** must be exercised according to law. Courts may only intervene if the exercise of power is so unreasonable that no reasonable decision-maker could have acted in that way (s 5(2)(g) / s23(g); *Wednesbury*; *Li*). Under the current scenario, it can be argued that **[X]** is unreasonable.

Unreasonableness in judicial review operates in two key forms: as a label for recognised legal errors (e.g., irrelevant considerations or improper purpose), and as a conclusion that a decision, though facially lawful, is irrational or unjustified in its reasoning or outcome (*Li*; French CJ; Gageler J). The standard has evolved from the traditionally narrow *Wednesbury* test to the broader, more flexible approach endorsed in *Minister for Immigration v Li*. In *Wednesbury*, Lord Greene MR described unreasonableness both broadly as encompassing various legal errors, and narrowly, as a decision so absurd that no reasonable authority could have made it (e.g., dismissing someone for red hair). *Li* softened this rigidity, holding that unreasonableness may arise from reasoning that lacks an "evident and intelligible justification" or from outcomes falling outside the range of lawful possibilities (at [76], [105]). The modern test focuses not on whether the court agrees with the decision but whether it breaches legal boundaries implied by the statute's subject matter, scope, and purpose. Thus, unreasonableness now encompasses both procedural flaws and substantively disproportionate or illogical decisions, even where no specific legal error is apparent.

Here, it can be argued that **[apply facts to below]**.

Broad / Process Oriented Unreasonableness:

- Ask
 - Did the DM misunderstand the law, consider irrelevant factors, or ignore mandatory relevant factors?
 - Did the DM fail to engage in an active intellectual process (Carrascalao)?
- Legal unreasonableness may arise in a broad or process-oriented sense where the decision-maker misdirects themselves in law, considers irrelevant matters, or fails to engage with mandatory relevant considerations (*Wednesbury*; *Peko-Wallsend*).
- Courts may also infer unreasonableness where there is no evidence of a genuine or active intellectual process—such as where the decision was made hastily or without meaningful engagement with the merits (Carrascalao).
- Improper weighting of evidence or reliance on flawed summaries may also indicate unreasonableness, particularly where disproportionate emphasis is placed on minor factors or where material central to the statutory purpose is disregarded (McQueen; *SZJSS*).
- In this broader sense, unreasonableness often overlaps with other legality grounds, but may independently justify judicial intervention where the reasoning process lacks legal coherence or fidelity to statutory purpose (*Li*).

Narrow / Outcome Orientated Unreasonableness

- Ask
 - Does the decision lack intelligible justification, or appear arbitrary, capricious, or disproportionate?
 - Does it fall outside what could be rationally defended under the statute (*Li*, *Eden*)?