

# Ultra vires

From Wikipedia, the free encyclopedia

**Ultra vires** is a [Latin phrase](#) meaning "beyond the powers". If an act requires legal authority and it is done with such authority, it is characterised in law as ***intra vires*** ("within the powers"). If it is done without such authority, it is *ultra vires*. Acts that are *intra vires* may equivalently be termed "valid" and those that are *ultra vires* "invalid".

## Contents

- [1 Corporate law](#)
  - [1.1 United Kingdom](#)
- [2 Constitutional law](#)
- [3 Administrative law](#)
  - [3.1 United Kingdom](#)
- [4 See also](#)
- [5 Notes](#)
- [6 References](#)

## Corporate law[\[edit\]](#)

See also: [Corporate law](#)

In corporate law, *ultra vires* describes acts attempted by a corporation that are beyond the scope of powers granted by the corporation's [objects clause](#), [articles of incorporation](#) or in a clause in its [Bylaws](#), in the laws authorizing a corporation's formation, or similar founding documents. Acts attempted by a corporation that are beyond the scope of its charter are [void](#) or [voidable](#).

1. An *ultra vires* transaction cannot be ratified by shareholders, even if they wish it to be ratified.
2. The doctrine of [estoppel](#) usually precluded reliance on the defense of *ultra vires* where the transaction was fully performed by one party.
3. *[A fortiori](#)*, a transaction which was fully performed by both parties could not be attacked.
4. If the contract was fully executory, the defense of *ultra vires* might be raised by either party.
5. If the contract was partially performed, and the performance was held to be insufficient to bring the doctrine of estoppel into play, a suit for [quasi contract](#) for recovery of benefits conferred was available.
6. If an [agent](#) of the corporation committed a [tort](#) within the scope of his or her employment, the corporation could not defend on the ground the act was *ultra vires*.

Several modern developments relating to corporate formation have limited the probability that ultra vires acts will occur. Except in the case of [non-profit corporations](#) (including [municipal corporations](#)), this legal doctrine is [obsolescent](#); within recent years, almost all business corporations are chartered to allow them to transact any lawful business. The [Model Business Corporation Act](#) of the United States states that: "The validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act." The doctrine still has some life among non-profit corporations or state-created corporate bodies established for a specific public purpose, such as universities or charities.

According to American laws, the concept of *ultra vires* can still arise in the following kinds of activities in some states:

1. Charitable or political contributions
2. Guaranty of indebtedness of another
3. Loans to officers or directors
4. Pensions, bonuses, stock option plans, job severance payments, and other fringe benefits
5. The power to acquire shares of other corporations
6. The power to enter into a partnership

## United Kingdom<sup>[edit]</sup>

See also: [United Kingdom company law](#)

In the United Kingdom, the [Companies Act 2006](#) sections 31 and 39 greatly reduced the applicability of *ultra vires* in corporate law, although it can still apply in relation to charities and a shareholder may apply for an [injunction](#), in advance only, to prevent an act which is claimed to be *ultra vires*.

In many jurisdictions, such as Australia, legislation provides that a corporation has all the powers of a natural person<sup>[1]</sup> plus others; also, the validity of acts which are made *ultra vires* is preserved.<sup>[2]</sup>

## Constitutional law<sup>[edit]</sup>

---

Under [constitutional law](#), particularly in [Canada](#) and the [United States](#), constitutions give federal and provincial or state governments various powers. To go outside those powers would be *ultra vires*; for example, although the court did not use the term in striking down a federal law in [United States v. Lopez](#) on the grounds that it exceeded the Constitutional authority of Congress, the Supreme Court still declared the law to be *ultra vires*.<sup>[3]</sup>

According to Article 15.2 of the [Irish constitution](#), the [Oireachtas](#) (parliament) is the sole lawmaking body in the [Republic of Ireland](#). In the case of [CityView Press v AnCo](#), however, the Irish Supreme Court held that the Oireachtas may delegate certain powers to subordinate bodies through primary legislation, so long as these delegated powers allow the delegatee only to further the principles and policies laid down by the Oireachtas in primary legislation and not craft new principles or policies themselves. Any piece of primary legislation that grants the power to make public policy to a body other than the Oireachtas is unconstitutional; however, as there is a presumption in Irish constitutional law that the Oireachtas acts within the confines of the Constitution, any legislation passed by the Oireachtas must be interpreted in such a way as to be constitutionally valid where possible.

Thus, in a number of cases where bodies other than the Oireachtas were found to have used powers granted to them by primary legislation to make public policy, the impugned primary legislation was read in such a way that it would not have the effect of allowing a subordinate body to make public policy. In these cases, the primary legislation was held to be constitutional, but the subordinate or secondary legislation, which amounted to creation of public policy, was held to be *ultra vires* the primary legislation and was struck down.

In [UK constitutional law](#), *ultra vires* describes patents, ordinances and the like enacted under the [prerogative powers](#) of the Crown that contradict statutes enacted by the [King-in-Parliament](#). Almost unheard of in modern times, *ultra vires* acts by the Crown or its servants were previously a major threat to the [rule of law](#).

[Boddington v British Transport Police](#) is an example of an appeal heard by House of Lords that contested that a bylaw was beyond the powers conferred to it under section 67 of the Transport Act 1962.<sup>[4]</sup>

## Administrative law<sup>[edit]</sup>

---

In [administrative law](#), an act may be [judicially reviewable](#) for *ultra vires* in a narrow or broad sense. Narrow *ultra vires* applies if an administrator did not have the substantive power to make a decision

or it was wrought with procedural defects. Broad *ultra vires* applies if there is an abuse of power (e.g., [Wednesbury unreasonableness](#) or bad faith) or a failure to exercise an administrative discretion (e.g., acting at the behest of another or unlawfully applying a government policy) or application of discretionary powers in irrational and wrong way.<sup>[6]</sup> Either doctrine may entitle a claimant to various prerogative writs, equitable remedies or statutory orders if they are satisfied.

## United Kingdom<sup>[edit]</sup>

In the seminal case of [Anisminic v Foreign Compensation Commission](#),<sup>[6]</sup> Lord Reid is accredited with formulating the doctrine of *ultra vires*. However, *ultra vires*, together with unreasonableness, was mentioned much earlier by Lord Russell in the well known case, [Kruse v Johnson](#),<sup>[7]</sup> regarding challenging by-laws and other rules. Anisminic is better known for not depriving courts of their jurisdiction to declare a decision a nullity, even if a statute expressly prevents the decision being subject to judicial review. Further cases such as [Bromley LBC v Greater London Council](#)<sup>[8]</sup> and [Council of Civil Service Unions v Minister for the Civil Service](#)<sup>[9]</sup> have sought to refine the doctrine.

In [Hammersmith and Fulham London Borough Council v Hazell](#)<sup>[10]</sup> the [House of Lords](#) held that [interest rate swaps](#) entered into by [local authorities](#) (a popular method of circumventing statutory restrictions on local authorities borrowing money at that time) were all *ultra vires* and [void](#), sparking a raft of satellite litigation.

## See also<sup>[edit]</sup>

---

- [Judicial activism](#)
- [Judicial Review in English Law](#)
- Mark Elliott ([St Catharine's College, Cambridge](#) proposes the modified *ultra vires* doctrine for administrative law, placing it firmly in the correct constitutional setting. (*The Ultra Vires Doctrine in a Constitutional Setting: Still the Central Principle of Administrative Law* [1999] Cambridge Law Journal Vol. 58 129)
- [Precedent](#)

## Notes<sup>[edit]</sup>

---

1. [Jump up](#) [Sn 124 Legal capacity and powers of a Company](#), *Corporations Act 2001*, Commonwealth Consolidated Acts
2. [Jump up](#) [Sn 125 Constitution may limit powers and set out objectives](#), *Corporations Act 2001*, Commonwealth Consolidated Acts
3. [Jump up](#) [United States v. Lopez](#), 514 [U.S.](#) 549, 567 (1995).
4. [Jump up](#) [Boddington v British Transport Police](#) [1998] UKHL 13
5. [Jump up](#) Örucü Esin, The Liability of administration in England and main principles applied in judicial review, in Onar Armagani, Fakulteler Matbaasi, Istanbul 1977, p.660
6. [Jump up](#) [1969] 2 WLR 163
7. [Jump up](#) [1898]
8. [Jump up](#) [1983] AC 768 (see Lord Wilberforce's judgment)
9. [Jump up](#) [1985] AC 374 (see Lord Diplock's judgment)
10. [Jump up](#) [1992] 2 AC 1