

Contents

<i>Table of Cases</i>	xxv
<i>Table of National Legislation</i>	lxxv
<i>Table of International and European Instruments</i>	lxxxv

PART I: THE HUMAN RIGHTS ACT 1

1	Background and Interpretation	3
1.	The Protection of Human Rights Prior to the Human Rights Act	3
2.	Background to the Human Rights Act	4
2.1	The Incorporation Debate	4
2.2	The Human Rights Bill	7
3.	Purpose of the Human Rights Act	8
4.	Structure of the Human Rights Act	10
5.	Convention Rights Given Further Effect	11
5.1	The Nature and Scope of the Convention Rights	11
5.2	The Impact of Other International Conventions	12
5.3	The Convention as a 'Living Instrument'	13
5.4	The Non-absolute Nature of the Majority of the Convention Rights	14
5.5	Derogations and Reservations	15
6.	Principles of Interpretation	17
7.	The Relationship between UK Courts and the European Court of Human Rights	19
7.1	The Current Approach	19
7.2	Exceptions to the Current Approach	20
7.3	Assessment of the Current Approach	23
8.	Other Aids to Interpretation	26
8.1	Judgments in Devolution Cases	26
8.2	Case Law and Instruments from Other Jurisdictions	27
8.3	Reports of the Joint Committee on Human Rights	28
9.	Reform of the Human Rights Act	29
2	The Benefit and Burden of the Human Rights Act	31
1.	Introduction	31
2.	The Benefit of Convention Rights: Victims	31
2.1	Section 7 Human Rights Act	31
2.2	Categories of Victim	33
2.2.1	Core Public Authorities	33
2.2.2	Potential Victims	34
2.2.3	Indirect Victims	34
2.2.4	Non-nationals and Those Living Outside the United Kingdom	34
2.2.5	Representative Bodies	35
2.3	Loss of Victim Status	36

2.4	<i>An actio popularis?</i>	37
3.	The Burden of Convention Rights: Public Authorities	39
4.	Core Public Authorities	40
4.1	Definition	40
4.2	Courts and Tribunals	42
4.3	Parliament	42
4.4	Which Core Public Authority is Responsible?	43
4.5	Application: Core Public Authorities	44
5.	Hybrid Public Authorities	45
5.1	Definition	45
5.2	Ensuring HRA Protection when Contracting Out	48
5.3	Application: Hybrid Public Authorities	49
5.3.1	Enforcement of Chancel Repairs	49
5.3.2	Seeking Possession of a Property	50
5.3.3	Provision of Care and Accommodation	51
5.3.4	Denying Application to Participate in a Farmers' Market	53
5.3.5	Regulation of Membership	53
5.3.6	Approving Minority Buy-outs	54
6.	Private Bodies	54
6.1	Interpreting Primary Legislation in Accordance with Section 3 of the HRA	55
6.2	The Development of the Common Law	56
3	The 'Acts' to which the Human Rights Act Applies	59
1.	Introduction	59
2.	Limitation Period	59
3.	Retrospective Effect	60
3.1	Generally	60
3.2	Criminal Proceedings	61
3.3	Civil Proceedings	64
3.4	The Application of Sections 3 and 4 of the Human Rights Act	65
3.5	Section 22(4) of the Human Rights Act	67
3.6	Getting Around the Problem of Retrospective Effect	68
3.6.1	Ongoing Violation of Convention Rights	68
3.6.2	Investigations into Deaths Occurring before 2 October 2000	69
3.6.3	The 'Act' Is Not Yet Complete	70
3.6.4	Utilising the Pre-HRA Position	70
3.6.5	Modified Common Law	71
4.	Acts which Occur Outside of the United Kingdom: Extra-territorial Effect	72
4.1	Acts of Non-UK Actors	72
4.2	Acts of UK Public Authorities	73
4.2.1	Jurisdiction as Defined by the European Court of Human Rights	74
4.2.2	Exceptions to Territorial Jurisdiction	74
4.2.3	State Agent Authority and Control	75
4.2.4	Effective Control over an Area	75
4.3	Extra-territorial Effect in Practice	76

4.3.1	Entry Clearance	76
4.3.2	British Diplomatic and Consular Agents	76
4.3.3	British Armed Forces	77
4.4	The Channel Islands and the Isle of Man	78
4.5	British Overseas Territories	79
5.	Failure to Act: Positive Duties	79
6.	Satellite Litigation	80
6.1	Criminal Proceedings	80
6.2	Civil Proceedings	81
4	Determining Incompatibility	83
1.	Introduction	83
2.	Prescribed by Law	84
2.1	Generally	84
2.2	A Legal Basis in Domestic Law	85
2.3	Sufficiently Accessible and Precise	85
2.3.1	Generally	85
2.3.2	Retrospective Effect	87
2.3.3	The Common Law	87
2.3.4	Codes and Guidelines	89
2.4	Applied in a Way which is Not Arbitrary	89
3.	Necessary	90
4.	Proportionality	90
4.1	Definition	90
4.2	The Shift from <i>Wednesbury</i>	92
4.3	Merits Review?	93
5.	Deference	96
5.1	Definition	96
5.2	Expertise Rather than Democratic Credentials	98
5.3	When to Defer?	102
6.	Deference in Practice	104
6.1	Criminal Justice	104
6.1.1	Prevention of Terrorism	104
6.1.2	Road Traffic Offences	105
6.1.3	Rape Complainant's Prior Sexual History	106
6.1.4	Policing	106
6.1.5	Sentencing	107
6.2	National Security	107
6.3	Social and Economic Policy	109
6.3.1	State Support	109
6.3.2	Pensions	109
6.3.3	Housing	110
6.3.4	Family Law	110
6.3.5	Social Justice	111
6.3.6	Cruelty to Animals	111
6.4	Political Decisions	112

5	The Defence of Primary Legislation	113
1.	Introduction	113
2.	Section 6(2) Human Rights Act	114
2.1	Introduction	114
2.2	Section 6(2)(a) Human Rights Act	115
2.3	Section 6(2)(b) Human Rights Act	116
3.	Section 3 Human Rights Act	119
3.1	Introduction	119
3.2	The Nature of Section 3	120
3.3	What Is Not Possible	121
3.4	What Is Possible	122
3.5	The Application of Section 3 in Hypothetical Cases	123
3.6	The Application of Section 3 in Practice	124
3.6.1	Criminal Justice	125
3.6.2	Anti-terrorism Measures	126
3.6.3	Sentencing	127
3.6.4	Parole Board	127
3.6.5	Coroner's Inquests	128
3.6.6	Family Law	128
3.6.7	Housing	129
3.6.8	Civil Procedure	130
3.6.9	Other	131
4.	Section 4 Human Rights Act	132
4.1	Interpretation	132
4.2	A Reasonable Period within which to Amend Domestic Law	134
4.3	A Declaration where the Government already Has Plans to Legislate	135
4.4	Failure to Legislate	135
4.5	The Use of Section 4 in Hypothetical Cases	136
4.6	Problems with the Declaration of Incompatibility	137
4.7	The Application of Section 4 in Practice	138
4.7.1	Criminal Justice	139
4.7.2	Gender Reassignment	139
4.7.3	Prevention of Terrorism	140
4.7.4	Care Standards	140
4.7.5	Mental Health	140
4.7.6	Immigration	141
5.	The Use of Hansard and Other Materials in Compatibility Cases	141
6.	Section 19 Human Rights Act: Statements of Compatibility	144
6	Remedies	147
1.	Introduction	147
2.	Just and Appropriate	148
3.	Effective	149
4.	The Power to Award Damages	150
5.	Court Must Have the Power to Award Damages	152
6.	Just Satisfaction	152

6.1	Any Other Relief or Remedy Granted	153
6.2	The Consequences of Any Decision	154
6.3	Other Circumstances	155
7.	The Principles Applied by the European Court of Human Rights	156
7.1	Introduction	156
7.2	Pecuniary Damage	158
7.3	Non-pecuniary Damage	160
7.4	Exemplary Damages	162
8.	The Level of Damages	163
9.	Application: Article 2	164
10.	Application: Article 3	166
11.	Application: Article 5	166
11.1	Section 9(3) Human Rights Act and Article 5(5)	166
11.2	Article 5(4): Delay	167
11.3	Article 5(4): Independence and Impartiality	168
12.	Application: Article 6	169
12.1	Article 6(1) Reasonable Time: Post Conviction	169
12.2	Article 6(1) Reasonable Time: Pre Conviction	170
12.3	Article 6(1): Independence and Impartiality	171
13.	Application: Article 8	173
13.1	Introduction	173
13.2	Private Life—Breaches by Public Authorities	174
13.3	Private Life—Breaches by the Private Sector	176
13.4	Family Life	177
14.	Application: Article 14	178

PART II: THE CONVENTION RIGHTS **179**

7	Article 2: The Right to Life	181
1.	Introduction	181
2.	Scope	183
3.	Definition of 'Life'	184
4.	Intentional Deprivation of Life	186
5.	Positive Duty to Safeguard Life	188
5.1	Nature of the Duty	188
5.2	State Responsibility	189
5.3	Justiciability	190
5.4	Knew or Ought to Have Known	190
5.5	Real and Immediate Risk to Life	191
5.6	Reasonable Measures	193
5.7	Application	194
	5.7.1 Protection of Those Whose Lives Are at Risk from the Acts of Another	194
	5.7.2 Protection of Witness Identity	195
	5.7.3 Protection of Identity Generally	197
	5.7.4 Protection of Those in the Care of the State	197
	5.7.5 Protection of Members of the Armed Forces	200

5.8	The Relationship between Article 2 and Common Law Negligence	202
6.	Duty to Investigate	204
6.1	Nature of the Duty	204
6.2	When Does the Duty Arise?	205
6.2.1	Death or Life-threatening Injuries post 2 October 2000	205
6.2.2	Link to the Substantive Obligations Imposed by Article 2	206
6.2.3	Justiciability	208
6.2.4	Intentional or Non-intentional Killing by an Agent of the State	209
6.2.5	Intentional or Non-intentional Killing by a Non-state Agent	210
6.2.6	Exculpating Factors	211
6.3	Form of the Investigation	211
6.3.1	Authorities Must Act of their Own Motion	212
6.3.2	Investigation Must Be Effective	212
6.3.3	Independence	214
6.3.4	Public Scrutiny	215
6.3.5	Involvement of Next of Kin	216
6.3.6	Outcome of the Investigation	217
6.4	Application	219
6.4.1	Deaths in Custody	219
6.4.2	Near Deaths in Custody	221
6.4.3	Deaths in Hospital	222
6.4.4	Death Involving the Police	223
6.4.5	Death Involving the Armed Forces	223
6.4.6	Death of Member of the Armed Forces	224
6.4.7	Death of Vulnerable Adult	224
7.	Exceptions	225
8	Article 3: Prohibition of Torture and Inhuman or Degrading Treatment or Punishment	227
1.	Introduction	227
2.	Severity of Ill-treatment	228
3.	Negative and Positive Duties	230
3.1	Distinguishing Negative from Positive	230
3.2	Positive Duty	232
3.2.1	When Does the Duty Arise?	232
3.2.2	Knew or Ought to Have Known	233
3.2.3	Reasonable Measures	233
3.2.4	Application	234
4.	Illness and Medical Treatment	235
4.1	State Responsibility	236
4.2	The Right to Die and the Right to Die with Dignity	236
4.3	Medical Treatment	237
5.	Conditions of Detention	239
5.1	Conditions of Detention Generally	239
5.2	Vulnerable Detainees	239
5.3	Detention for Treatment of a Mental Disorder	240
5.4	Prisoners with Medical Conditions	240

5.5	Handcuffing Outside of Prison	241
5.6	Physical Restraint in Detention	242
5.7	Seclusion and Segregation	242
5.8	Slopping Out	242
6.	Violence and Threatening Behaviour	243
7.	Sentencing	244
7.1	Taking into Account Ill-health	245
7.2	Automatic Life Sentence	245
7.3	Mandatory Life Sentence	246
7.4	Whole Life Tariff	246
8.	Criminal Law	248
9.	State Support	248
10.	Deportation and Extradition	250
10.1	The Nature of the Duty	250
10.1.1	Real Risk Test	250
10.1.2	Evidential Issues	251
10.1.3	Article 3 in an Extradition Context	252
10.1.4	Assurances from the Destination State	253
10.1.5	Safe List of Countries	254
10.1.6	Contracting States to the ECHR	255
10.1.7	Member States of the European Union	255
10.2	Application	256
10.2.1	Exacerbation of Illness and Risk of Suicide	256
10.2.2	Medical Treatment in Destination State	258
10.2.3	Punishment and Sentencing	259
10.2.4	Conditions of Detention	260
10.2.5	Legal Restrictions on Homosexuality	262
10.2.6	Ill-treatment by Non-state Actors: Sufficiency of State Protection	262
11.	Duty to Investigate	263
11.1	The Nature of the Duty	263
11.2	The Content of the Duty to Investigate	264
11.3	The Duty to Investigate in Practice	266
11.3.1	Detention	266
11.3.2	Policing	266
11.3.3	Armed forces	267
9	Article 5: The Right to Liberty and Security	269
1.	Introduction	269
2.	What Constitutes a Deprivation of Liberty?	270
2.1	Restrictions on Liberty of Movement	272
2.2	Control Orders	272
2.3	Provision of Care	274
2.4	Parents and Children	275
2.5	Crowd Control	275
2.6	Stop and Search	276

3.	Article 5(1)	277
3.1	Procedure Prescribed by Law	278
3.2	Lawful	278
	3.2.1 Lawful under Domestic Law	279
	3.2.2 Prescribed by Law	279
	3.2.3 Not Arbitrary	280
	3.2.4 Extradition and Deportation	280
3.3	Article 5(1)(a): Conviction by a Competent Court	280
	3.3.1 Causal Link	280
	3.3.2 Disproportionate Period of Detention	282
3.4	Article 5(1)(b): Non-compliance with the Lawful Order of a Court or to Secure the Fulfilment of any Obligation Prescribed by Law	284
3.5	Article 5(1)(c): Reasonable Suspicion of Having Committed an Offence	284
3.6	Article 5(1)(d): Minors	285
3.7	Article 5(1)(e): Persons of Unsound Mind	286
	3.7.1 Minimum Conditions	286
	3.7.2 Public Safety	289
	3.7.3 Treatment	289
3.8	Article 5(1)(f): Unauthorised Entry, Action Taken with a View to Deportation or Extradition	290
	3.8.1 Unauthorised Entry: Detention of Asylum Seekers	290
	3.8.2 Deportation: Detention of Deportees	291
	3.8.3 Deportation: Length of Detention	292
	3.8.4 Extradition: Meaning of Lawfulness	293
4.	Article 5(2): Reasons for Arrest	293
5.	Article 5(3)	295
	5.1 The Right to Be Released on Bail	295
	5.2 The Right to Be Tried within a Reasonable Time	296
6.	Article 5(4)	297
	6.1 Introduction	297
	6.2 Access to Court	298
	6.3 Review of Lawfulness	299
	6.3.1 Introduction	299
	6.3.2 Unsound Mind	299
	6.3.3 Determinate Sentences	299
	6.3.4 Indeterminate Sentences	301
	6.4 Attributes of a Court	302
	6.5 Independence and Impartiality	303
	6.5.1 Home Secretary	303
	6.5.2 Medical Member, Mental Health Tribunal	304
	6.5.3 Parole Board	305
	6.6 Fairness	306
	6.6.1 Introduction	306
	6.6.2 Burden of Proof and Evidence	307
	6.6.3 Oral Hearing	308
	6.6.4 Equality of Arms	309

6.7	Decided Speedily	310
6.7.1	Principles	310
6.7.2	Mental Health Detainees	311
6.7.3	Life Sentence Prisoners	313
6.7.4	Prisoners Serving Indeterminate Sentences	314
6.7.5	Prisoners Serving Determinate Sentences	315
7.	Article 5(5): Enforceable Right to Compensation	316
10	Article 6: The Right to a Fair Trial	319
1.	Introduction	319
2.	Deportation and Extradition	322
3.	Article 6(1) Application: Determination of Civil Rights and Obligations	323
3.1	Civil Rights and Obligations	324
3.1.1	Generally	324
3.1.2	Public Law Rights	325
3.1.3	Public Sector Workers	326
3.2	Determination	327
3.3	Administrative Decisions: The Two-stage Process	329
3.4	Examples: Determination of Civil Rights and Obligations	331
4.	Article 6(1) Application: Determination of Any Criminal Charge	333
4.1	Determination	333
4.1.1	Pre-trial Decisions	334
4.1.2	Sentencing	335
4.2	Criminal Charge	335
4.2.1	Domestic Classification	335
4.2.2	Nature of the Offence	337
4.2.3	Severity of the Potential Penalty	338
4.3	Examples	339
5.	Access to Court	340
5.1	Generally	340
5.2	Substantive and Procedural Bars	341
5.3	Limitation Periods	342
5.4	Security for Costs	344
5.5	Vexatious Litigants	344
5.6	Immunity from Suit	345
5.7	Prisoners	346
5.8	Absence of Legal Representation	347
5.9	Striking Out	347
6.	Fair Hearing	348
6.1	Equality of Arms	349
6.1.1	Generally	349
6.1.2	Legal Representation	350
6.1.3	Disclosure	350
6.1.4	Public Interest Immunity	352
6.1.5	National Security: Control Order Cases	353
6.1.6	National Security: Other Types of Case	355
6.1.7	Child Witnesses	357

6.2	Self-incrimination	358
6.3	Right to Silence	360
6.4	Presumption of Innocence	361
6.5	Representation	362
6.6	Oral Hearing	363
6.7	Conducting a Proper Examination	364
6.8	Evidence	364
	6.8.1 Generally	364
	6.8.2 Evidence Obtained by Entrapment	364
	6.8.3 Illegally Obtained Evidence	365
	6.8.4 Evidence Procured by Torture	366
	6.8.5 Hearsay Evidence	366
	6.8.6 Dock Identification Evidence	367
	6.8.7 Exclusionary Rules	367
	6.8.8 Trial in Absentia	368
6.9	Reasons	370
7.	Public Hearing and Public Pronouncement	371
8.	Reasonable Time	372
	8.1 Generally	372
	8.2 Criminal Proceedings	373
	8.2.1 Start of the Time Period	373
	8.2.2 Determining a Reasonable Time	374
	8.2.3 Application	375
	8.3 Civil Proceedings	376
	8.3.1 Start of the Time Period	376
	8.3.2 Determining a Reasonable Time	376
	8.4 Remedy	376
	8.4.1 Criminal Proceedings: Pre-conviction	377
	8.4.2 Criminal Proceedings: Post-conviction	378
9.	Independent and Impartial Tribunal	379
	9.1 Generally	379
	9.2 Test for Independence and Impartiality	380
	9.2.1 Subjective Test	380
	9.2.2 Objective Test	380
	9.2.3 Rehearing: Generally	381
	9.2.4 Rehearing: Administrative Decisions	382
	9.3 Separation of Powers	383
	9.4 Waiver	384
	9.5 Application	385
	9.5.1 Judiciary	385
	9.5.2 Juries	388
	9.5.3 Courts Martial	388
	9.5.4 Government Ministers	389
	9.5.5 Local Authorities	390
	9.5.6 Professional Bodies	390
10.	Tribunal Established by Law	391
11.	Article 6(2): Presumption of Innocence	392

11.1	Generally	392
11.2	Burden of Proof	393
11.3	Application	395
11.3.1	Confiscation Orders	395
11.3.2	Drugs Offences	396
11.3.3	Road Traffic Offences	397
11.3.4	Trade Marks Offences	397
11.3.5	Terrorism Offences	398
12.	Article 6(3)(a): Informed of the Nature and Cause of the Accusation	399
13.	Article 6(3)(b): Adequate Time and Facilities for Preparation of Defence	400
14.	Article 6(3)(c): Legal Assistance	400
14.1	Waiver of the Right	401
14.2	Process of Investigation	402
14.3	Effective Representation	403
14.4	Legal Assistance	404
15.	Article 6(3)(d): Witnesses	405
16.	Article 6(3)(e): Interpreter	408
11	Article 8: The Right to Respect for Private Life	409
1.	Introduction	409
2.	Private Life	410
2.1	Generally	410
2.2	Information	413
2.2.1	Generally	413
2.2.2	Is the Information Private?	413
2.2.3	Public Figures and Private Life	415
2.2.4	Relationships	416
2.2.5	Photographs in Public Places	417
2.2.6	Filming in Public Places	419
2.2.7	Convictions and Other Information Retained by Police	419
2.2.8	Corporate Information	420
2.3	Identity	421
2.4	Physical and Psychological Integrity	422
2.4.1	Generally	422
2.4.2	Medical Treatment	423
2.4.3	Policing	423
2.4.4	Prison and Prison Conditions	424
2.4.5	State Support	425
2.4.6	Environmental Pollution	425
2.4.7	Deportation and Extradition	425
2.5	Autonomy (Self-determination)	426
2.6	Social Life and Working Life	427
2.7	Correspondence	429
3.	Positive Duties	430
3.1	Generally	430
3.2	The Test to Establish a Breach of the Positive Duty	431
3.3	State Support	431

3.4	Policing and Criminal Justice	433
4.	Who Has a Private Life?	434
5.	Who Must Respect Private Life?	435
6.	Permitted Interferences	436
6.1	In Accordance with the Law	436
6.2	General Factors Affecting the Proportionality Analysis	437
6.3	Deference to the Primary Decision Maker	438
7.	National Security	440
8.	Economic Well-being of the Country	440
8.1	Deportation and Extradition: Foreign cases	441
8.1.1	Generally	441
8.1.2	Medical Treatment	441
8.1.3	Homosexuality	442
8.2	Deportation and Extradition: 'Domestic' Cases	442
8.3	Other	444
9.	Prevention of Disorder or Crime	445
9.1	Evidence Obtained by Secret Filming or Recording	445
9.2	Fingerprints, DNA Samples and Other Personal Information— Taking and Retention	446
9.3	Police Photography	447
9.4	Stop and Search	448
9.5	Disclosure of Police Information	449
9.5.1	Enhanced Criminal Record Certificates	449
9.5.2	Convictions and Cautions	451
9.5.3	Notification and Licence Requirements	451
9.6	Offender Naming Schemes	452
9.7	Prisoners	453
9.8	Control orders	454
10.	Protection of Health	455
11.	Protection of Morals	456
12.	Protection of Rights and Freedoms of Others	456
12.1	Fair Trial and Open Justice	457
12.1.1	Generally	457
12.1.2	Access to Court	457
12.1.3	Applications for Anonymity	458
12.2	Right to Life	458
12.3	Private Life	459
12.4	Freedom of Expression	460
12.5	Children and Vulnerable Adults	462
12	Article 8: The Right to Respect for Family Life	465
1.	Introduction	465
2.	Family Life	465
2.1	Definition	465
2.2	Parents and Children	466
2.3	Adoptive Relationships	468
2.4	Same-sex Relationships	469

3.	Interference	470
3.1	Children	471
3.1.1	Generally	471
3.1.2	Procedural Rights	472
3.1.3	Positive Duties	473
3.2	State Support	475
3.3	Deportation and Extradition	476
3.4	Deportation and Extradition—Foreign Cases	477
3.5	Entry Clearance and Visas	478
4.	Permitted Interferences	480
5.	Economic Well-being of the Country	480
5.1	Deportation and Removal	480
5.1.1	Generally	480
5.1.2	Assessing Proportionality—The Task of an Appellate Immigration Authority	482
5.1.3	Impact on Other Family Members	484
5.1.4	Children	484
5.1.5	Delay	485
5.2	Entry Clearance and Visas	486
5.2.1	Leaving the UK to Apply for Entry Clearance	486
5.2.2	Fees and Other Barriers	486
5.2.3	Historic Injustice	487
5.3	Dispersal of Asylum Seekers	487
6.	Prevention of Disorder or Crime	488
6.1	Deportation and Removal	488
6.2	Extradition	488
6.2.1	Generally	488
6.2.2	Impact on Children	489
6.3	Prisoners	491
6.4	Parenting Orders	493
6.5	Compellable Witnesses	493
7.	Protection of the Rights and Freedoms of Others	494
7.1	Children: Care Orders	494
7.2	Children: Contact Orders	496
7.3	Children: Adoption	497
7.3.1	Generally	497
7.3.2	Adoption without Consent	497
7.3.3	Adoption with Consent	498
7.3.4	Contacting Relatives Prior to Adoption	498
7.3.5	Time Limits	499
7.4	Children: Removing a Child from the Jurisdiction	499
7.5	Children: Abduction	500
7.6	Children and Parents: Paternity	501
7.7	Children and Parents: Health	501
7.8	Vulnerable People: Entry Clearance	502

13	Article 8: The Right to Respect for Home	503
	1. Introduction	503
	2. Home	504
	3. Interference	505
	3.1 Planning	505
	3.2 Proceedings for Possession	506
	3.3 Care Homes	507
	3.4 Environmental Pollution	508
	3.5 Criminal Justice	509
	4. Positive Duties	509
	5. Permitted Interferences	510
	6. For the Prevention of Disorder or Crime	511
	7. Economic Well-being of the Country	512
	7.1 Care Home Closures	512
	7.2 Standards of Public Housing	513
	7.3 Management of Sewage and Drainage	513
	8. Protection of the Rights and Freedoms of Others	514
	8.1 Generally	514
	8.2 Bankruptcy—The Rights of Creditors	515
	8.3 Public Interest in Preserving the Environment	515
	8.4 Compulsory Purchase	517
	8.5 Proceedings for Possession	518
	8.5.1 Generally—Conflicting Jurisprudence	518
	8.5.2 The Current Approach to Proceedings for Possession: <i>Pinnock</i> and <i>Powell</i>	520
	8.5.3 Lower Courts post <i>Pinnock</i>	524
14	Article 9: Freedom of Thought, Conscience and Religion	527
	1. Introduction	527
	2. The Right to Believe	529
	3. The Right to Manifest	530
	3.1 Recognising a Manifestation of Belief	530
	3.2 Manifestations within the Protection of Article 9	532
	3.3 Manifestations Outside of the Protection of Article 9	534
	3.4 Conscientious Objection	535
	4. Interference with Manifestation of Belief	536
	4.1 Difficulties in Establishing an Interference with Manifestation of Belief	536
	4.2 Examples of No Interference with Manifestation of Belief	538
	4.3 Examples of Interferences with Manifestation of Belief	541
	4.4 A Change in Approach	542
	4.5 Deportation and Extradition	542
	5. Permitted Interference with the Right to Manifest	543
	5.1 Health or Morals	543
	5.2 Protection of the Rights and Freedoms of Others	544
	5.2.1 Respect for the Homosexual Community	544

5.2.2	Vulnerable People	545
5.2.3	Children	545
5.2.4	Employers	547
5.2.5	Prisons and Prisoners	547
5.2.6	Fair Administration of Justice	548
15	Article 10: The Right to Freedom of Expression	549
1.1	Introduction	549
2.1	Expression	551
3.1	Medium, Manner and Timing of Communication	553
4.1	Freedom to Receive and Impart Information and Ideas	555
5.1	Interference	557
6.1	Positive Duties	559
7.1	Permitted Interferences	560
8.1	General Principles	561
8.1.1	Section 12 HRA	561
8.2.1	Importance of Freedom of Expression	562
8.3.1	Importance of Freedom of the Press	563
8.4.1	The Public Interest	564
8.4.1.1	Defining the Public Interest	565
8.4.2.1	Political Information	566
8.4.3.1	Public Figures	567
8.4.4.1	Commercial Expression	570
9.1	National Security	570
10.1	Prevention of Disorder or Crime	572
11.1	Protection of Health or Morals	573
12.1	Protection of the Reputation of Others	574
12.1.1	Qualified Privilege	575
12.1.1.1	The Nature of Reynolds Privilege	576
12.1.1.2	Public Interest	577
12.1.1.3	Responsible Journalism	577
12.2.1	The Impact of Article 10 on Other Aspects of Defamation Law	579
13.1	Protection of the Rights of Others	580
13.1.1	Articles 2 and 3	581
13.2.1	Article 8	581
13.2.1.1	Private Lives of Public Figures	581
13.2.2.1	Anonymity Orders in Legal Proceedings	583
13.2.3.1	Super-injunctions	585
13.2.4.1	Protection of Identity	586
13.2.5.1	Restrictions on Reporting Legal Proceedings	587
13.2.6.1	Private Lives of Private Figures	588
13.3.1	Article 9	588
13.4.1	Article 1 Protocol No 1	588
13.5.1	Right Not to Be Insulted and Distressed	590
13.5.1.1	Protest	590
13.5.2.1	Extreme Protest	593

13.5.3 Pre-emptive Policing and Protest	593
13.5.4 Taste Decency and Causing Offence	594
13.6 Democratic Rights	595
14. Preventing the Disclosure of Information Received in Confidence	597
14.1 Generally	597
14.2 Disclosure of a Journalist's Source	598
15. Maintaining the Authority and Impartiality of the Judiciary	601
16 Article 14: Prohibition of Discrimination	605
1. Introduction	605
2. Application: No Independent Existence	607
2.1 Within the Ambit of One or More Convention Rights	607
2.2 Article 3	608
2.3 Article 5	609
2.4 Article 8: Private Life	609
2.5 Article 8: Family Life	610
2.6 Article 8: Respect for Home	611
2.7 Article 9	612
2.8 Article 1 Protocol No 1	613
2.9 Article 2 Protocol 1: Education	613
3. Without Discrimination	614
3.1 Difference in Treatment: Direct Discrimination	614
3.2 No Difference in Treatment: Indirect Discrimination	615
3.2.1 Gypsies and Travellers	615
3.2.2 Nationality	616
3.2.3 Disability	616
3.2.4 Sex	617
4. Positive Duty	618
5. Grounds	618
5.1 Introduction	618
5.2 'Other Status'	619
5.3 Included within 'Other Status'	619
5.4 Not Included within 'Other Status'	620
5.5 Suspect Grounds of Discrimination	621
6. Analogous Position	623
6.1 Determining Analogous Situations	623
6.2 Examples of Analogous Situations	624
6.3 Examples of Non-analogous Situations	625
7. Objective and Reasonable Justification	626
7.1 Determining Justification	626
7.2 Reasonable Time for Change	628
7.3 Social and Economic Factors	629
7.3.1 Generally	629
7.3.2 Welfare Benefits	629
7.3.3 Taxation	631
7.3.4 Immigration Control	632

7.4	Protection of the Environment	634
7.5	Health	634
7.6	Protection of the Traditional Family Unit	635
7.7	Crime and Sentencing	636
7.8	Protection against Terrorist Acts	637
8.	Remedy for Breach	638
17	Article 1 Protocol No 1: Protection of Property	639
1.	Introduction	639
2.	Possessions	640
2.1	Generally	640
2.2	Personal Possessions	642
2.3	Business Possessions	643
2.4	Licences	644
3.	Interferences with the Peaceful Enjoyment of Possessions	646
3.1	Generally	646
3.2	Deprivation	647
3.2.1	Incident of Ownership	648
3.2.2	Future Deprivation	650
3.3	Control	651
4.	Justifying Interferences	652
4.1	Generally	652
4.2	Lawfulness of Interference	655
4.3	Legitimate Aim	656
4.4	Proportionality	657
4.4.1	Generally	657
4.4.2	Deference	657
4.4.3	Compensation	658
4.4.4	Procedural Rights	659
5.	Consumer Protection	660
6.	Planning and the Environment	662
7.	The Rights of Others	663
7.1	Freedom of Expression	663
7.2	Article 1 Protocol 1	664
7.2.1	Generally	664
7.2.2	Adverse Possession	666
7.3	Vulnerable People	667
8.	Social Justice	667
9.	Protection of Morals	668
10.	Prevention of Crime and Illegality	669
10.1	Confiscation Orders	669
10.2	Anti-terror Measures	672
10.3	Illegality	672
11.	Economic Well-being of the Country	672
11.1	Taxes	672
11.2	Duties	674

11.3	Penalties—Clandestine Entrants	676
11.4	Child Support	677
11.5	Nationalisation in the Public Interest	677
11.6	Reduction of the National Budget Deficit	678
11.7	Recovery of Overpaid Welfare Benefit	678
	<i>Index</i>	679