

# CONTENTS

<i>Acknowledgements</i> .....	v
<i>List of Cases</i> .....	xiii

## Chapter 1. An Introduction to Domestic Abuse and Human Rights . . . . 1

1. Introduction .....	1
2. Terminology .....	1
3. Legal Attitudes Towards Domestic Abuse .....	3
4. Domestic Abuse in its Social Context .....	5
5. Privacy .....	8
6. Human Rights .....	10
7. Violence against Women .....	15
8. Outline of the Coverage of this Book .....	17

## Chapter 2. The Nature of Domestic Abuse ..... 19 |

1. Introduction .....	19
2. Statistics .....	19
3. Official Definitions .....	21
3.1. The World Health Organization .....	21
3.2. The Istanbul Convention .....	22
3.3. The Council of Europe .....	22
3.4. The European Commission .....	23
3.5. UK Law .....	23
3.6. Discussion of the Definitions .....	25
4. Developing a Definition of Domestic Abuse .....	25
4.1. Coercive Control .....	26
4.2. Intimate Relationship .....	32
4.3. Patriarchal Social Inequality .....	33
4.3.1. How Domestic Abuse Sustains Patriarchy .....	37
4.3.2. How Patriarchy Sustains Domestic Abuse .....	40
5. Gender and Domestic Abuse .....	43
5.1. Gender and Statistics .....	44

5.2.	Victims of Domestic Abuse Outside the Heterosexual Context .....	46
5.3.	Problems with the Category ‘Women’ .....	50
5.3.1.	The Gender Binary .....	50
5.3.2.	Intersectionality .....	51
6.	Conclusion: The Wrongs of Domestic Abuse .....	55
6.1.	Loss of Freedom .....	55
6.2.	A Breach of Trust .....	56
6.3.	Attack on the Self .....	56
6.4.	The Impact on Children .....	57
6.5.	Public Harms .....	57

**Chapter 3. The ECHR, the Istanbul Convention**

<b>and Domestic Abuse .....</b>	<b>59</b>
---------------------------------	-----------

1.	Introduction .....	59
2.	The ECHR .....	60
2.1.	An Introduction .....	60
2.2.	The Right to Protection .....	62
2.2.1.	Article 2 .....	62
2.2.2.	Article 2 and Domestic Abuse .....	63
2.2.3.	Article 3 .....	63
2.2.4.	Article 3 and Domestic Abuse .....	67
2.2.5.	Article 6 .....	71
2.2.6.	Article 8 .....	73
2.2.7.	Article 8 and Domestic Abuse .....	75
2.2.8.	Article 13 and the Right to a Remedy .....	76
2.2.9.	Article 14 .....	76
2.2.10.	Article 14 and Domestic Abuse .....	77
2.3.	Balancing Different Rights .....	80
2.4.	Losing Respect .....	84
2.5.	Positive Duties on the State .....	87
2.5.1.	The Level of Knowledge Required .....	87
2.5.2.	What is Required of the State? .....	92
2.5.2.1.	General Duties .....	92
2.5.2.2.	Specific Operational Duties .....	94
2.6.	Conclusion .....	99
3.	The Istanbul Convention .....	99
3.1.	An Introduction .....	99
3.2.	Gender and the Istanbul Convention .....	101

3.3.	Prevention .....	106
3.4.	Protection and Support .....	107
3.5.	Prosecution .....	108
3.6.	Policy Integration .....	110
4.	Conclusion .....	111
<b>Chapter 4. Legal Responses to Domestic Abuse .....</b>		<b>113</b>
1.	Introduction .....	113
2.	The Range of Legal Responses .....	113
3.	Problems with the Traditional Substantive Criminal Law's Response to Domestic Abuse .....	114
3.1.	The Photograph Approach .....	115
3.2.	The Nature of Harm in the Criminal Law .....	115
3.3.	An Example of the Problem of Traditional Criminal Law and Domestic Abuse .....	117
4.	The Offence of Coercive Control .....	119
4.1.	The Definition of Coercive and Controlling .....	121
4.2.	Repeatedly and Continuously .....	122
4.3.	Personally Connected .....	122
4.4.	The Impact of the Behaviour .....	123
4.5.	The Required Mental State .....	124
4.6.	The Exclusion of Parents .....	125
4.7.	Defences .....	125
5.	Should there be a Specific Domestic Abuse Offence? .....	126
5.1.	A Special Wrong? .....	126
5.2.	The Incident Approach .....	130
5.3.	Gender-Neutrality .....	131
5.4.	Distinguishing Abusive from Non-Abusive Behaviour .....	132
5.5.	The Required Mental State .....	134
5.6.	Defence .....	135
6.	Victims of Domestic Abuse and Defences .....	136
6.1.	Loss of Control .....	137
6.2.	Diminished Responsibility .....	139
6.3.	Self-Defence .....	142
6.4.	Conclusion on Defences for Victims of Domestic Abuse .....	144
7.	Prosecution Policy in Domestic Abuse Cases .....	145
7.1.	Arguments for Pro-Prosecution Policies .....	146
7.2.	Arguments against Pro-Prosecution Policies .....	149
7.3.	Conclusions on Prosecution Policy .....	153



8.	Civil Orders .....	153
8.1.	Who can Apply for these Orders? .....	154
8.2.	Occupation Orders.....	155
8.3.	A Human Rights Analysis.....	156
9.	Non-Legal Approaches.....	157
10.	Conclusion.....	158

**Chapter 5. Domestic Abuse and Children .....** 159

1.	Introduction .....	159
2.	Statistics on Domestic Abuse and Children .....	161
3.	Statistical and Conceptual Links between Domestic Abuse and Child Abuse .....	162
3.1.	Statistical Links.....	162
3.2.	Conceptual Similarities .....	163
4.	Witnessing or Living with Domestic Abuse as a Form of Child Abuse.....	165
4.1.	Being Harmed in the Incident .....	168
4.2.	Children as Tools in the Abuse.....	169
4.3.	Loss of Normality.....	170
4.4.	Negative Role Modelling.....	170
5.	Abusing the Maternal–Child Relationship is Abusing the Child....	172
6.	Contact and Domestic Abuse .....	174
6.1.	The Harm of Conflict.....	177
6.2.	Parental Alienation .....	179
6.3.	Downplaying the Severity of Abuse.....	184
6.4.	Difficulties of Proof .....	185
7.	The Case for a Strong Presumption against Contact where Domestic Abuse has been Found .....	186
7.1.	Domestic Abuse as Evidence of Bad Parenting .....	186
7.2.	Responsibility for Behaviour .....	187
7.3.	The Importance of the Child–Primary Carer Bond .....	188
8.	Child Protection .....	188
9.	Human Rights .....	190
10.	Conclusion.....	192

**Chapter 6. The Abuse of Parents by Children .....** 195

1.	Introduction .....	195
2.	Statistics .....	196

3.	Definitions .....	198
3.1.	Coercive Control and Parental Abuse .....	199
3.2.	Parental Abuse and Patriarchal Structural Inequality .....	200
3.2.1.	Gender .....	200
3.2.2.	Motherhood .....	202
3.2.3.	Childhood .....	203
3.2.4.	Links with Domestic Violence and Witnessing It ...	205
4.	Tensions in the Parental Abuse/Domestic Abuse Link .....	206
5.	Legal Responses .....	208
5.1.	Criminal Law .....	208
5.2.	Civil Orders .....	210
5.3.	Child Protection .....	211
6.	Non-Legal Interventions .....	212
7.	Conclusion: Developing a Human Rights Approach .....	213
<b>Chapter 7. Elder Abuse .....</b>		<b>215</b>
1.	Introduction .....	215
2.	Defining Elder Abuse .....	216
2.1.	Coercive Control .....	218
2.2.	Intimacy .....	218
2.3.	Patriarchy and Elder Abuse .....	219
2.3.1.	Sexism .....	220
2.3.2.	Ageism .....	220
2.3.3.	Intersectionality and Elder Abuse .....	222
3.	Statistics on Elder Abuse .....	223
4.	'Caregiver Stress' .....	225
5.	Elder Abuse and Domestic Abuse .....	226
6.	A Rights-Based Approach to Elder Abuse .....	229
7.	Legal Responses to Elder Abuse .....	230
7.1.	Crime and Elder Abuse .....	230
7.1.1.	Gaps in the Current Law .....	230
7.1.2.	An Offence of Elder Abuse? .....	234
7.2.	Rights of Protection .....	236
8.	Conclusion .....	238
<b>Chapter 8. Concluding Thoughts .....</b>		<b>241</b>
<i>Index</i> .....		245