

Contents

<i>Series Editor's Preface</i>	ix
<i>Preface and acknowledgements</i>	xi
<i>Table of Cases</i>	xvii
Part I	
The Architecture of the Human Rights Act	1
1 Great Expectations	3
Introduction	3
The Place of Domestic Authorities Within the ECHR System	5
The Bill of Rights Debate in the United Kingdom	9
<i>Bringing Rights Home</i>	13
<i>Rights Brought Home</i>	15
A Collaborative Exercise?	16
Parliamentary Sovereignty – and Rights Sceptics – Assuaged?	18
The Preparatory Stages for Implementing the Act	20
2 Human Rights and the Political Process	25
Introduction	25
House of Lords Reform and Human Rights	26
Compatibility Statements under Section 19 HRA	28
The Parliamentary Joint Committee on Human Rights in Practice	36
Human Rights Scrutiny in the Devolved Assemblies	43
Conclusion	48
3 The Courts (I): Sources of law	51
Introduction	51
Section 2(1) and the Duty to 'Take into Account'	
Strasbourg Decisions	51
The Margin of Appreciation and UK Courts	53
Domestic Reception of the Strasbourg Case Law	56
Curtailing Judicial Discretion Under Section 2(1) HRA	59
'Clear and Constant' Jurisprudence	60
Departure from Strasbourg	62
No Less, But No More Than the Convention Allows	66
Domesticated Interpretations of 'the Convention Rights'	67
Discretion as to the 'Qualification' Analysis	69
The HRA and <i>Stare Decisis</i>	71
Authority From Other Jurisdictions	75
Towards a Municipal Rights Jurisprudence?	78
The Exceptions to the Rule	79

4 The Courts (II): Interpretation and Its Limits	83
Introduction	83
Maximalist and Minimalist Perspectives on the Human Rights Act: A Constitutional or Interpretative Measure?	84
A Constitutional Measure – our ‘Bill of Rights’?	85
Section 3(1) HRA	88
Balancing Judicial and Political Power	89
Deference to the Legislature	92
The Limits of Interpretation Under Section 3(1)	95
The ‘Radical’ Approach to Interpretation	95
Imposing Limitations on Section 3(1)?	97
<i>Ghaidan v Godin-Mendoza</i>	103
What Is Possible Under the Human Rights Act?	106
5 The Co-operative Constitution?	111
Introduction	111
Promoting Dialogue Through Declarations of Incompatibility?	115
Responding to Incompatibility	118
The Separation of Powers After the Human Rights Act	121
The Influence of the Convention Case Law	123
Enhanced Accountability	125
Blurring Boundaries	126
Conclusion: the Co-operative Constitution?	129
Part II	
Domestic Remedies for Violations of Convention Rights	131
6 Public Law Remedies: the Scope and Standard of Judicial Review under the HRA	133
Introduction	133
Prior to the Human Rights Act	134
The Range of Review	138
Privatisation	144
The Voluntary Sector	147
The Standard of Review: Parameters of the Debate	149
Distinguishing Proportionality from <i>Wednesbury</i>	153
The New Approach in Practice	154
Substantial Evidence	154
Treating Proportionality as a Question of Law	157
Re-asserting Deference in Judicial Review	159
The Policy/Fact-finding Distinction Under Article 6	159
‘Indirect’ Deference to Parliament	161
Differential Stages to Proportionality: Prisoners and Deportation Cases	163

Taking Stock	165
Revitalising <i>Daly</i>	165
The Strasbourg Reaction	166
Conclusion	168
7 Human Rights and the Criminal Trial	171
Introduction	171
The Scope of Protection: the Meaning of ‘Criminal Charge’	173
Substantive Offences and Article 6	175
Reverse Onus of Proof and the Presumption of Innocence	178
Evidence Obtained in Violation of Convention Rights	181
Why This Is an Issue of Remedies	181
The Convention Position	184
How a Maximalist Position Could Be Argued	186
What Has Happened Under the HRA	187
Conclusion	189
Appeals	190
Unsafe/Unfair	190
Retrospective Effect	195
Sentencing	196
Conclusion	200
8 Human Rights and Counter-Terrorist Measures	201
Historical Background	201
9/11, Parliament and the 2001 Act	202
Control Orders	214
Broader Aspects of the ‘War on Terror’	217
Stop and Search Powers	218
Mistreatment and Evidence Obtained by Torture	219
The Rules are Changing	225
Conclusion: War on Terror/ War on the Judges	231
9 ‘Horizontal rights’	235
Introduction	235
The Constitutional Foundations of Human Rights	238
Types of Horizontal Applicability under the HRA	242
Specific Areas of Private Law	248
Privacy and Protection from Misuse of Personal Information	248
Contract, Certainty and Horizontality	252
Employment Law	257
Property Law	259
Conclusion	262
10 Civil Law Remedies	265
Introduction	265
The Breadth of Section 8	267

xvi *Contents*

‘Just Satisfaction’	271
The Award of Damages Under the Human Rights Act	273
<i>Anufrijeva v Southwark London Borough Council</i>	276
<i>R (Greenfield) v Secretary of State for the Home Department</i>	278
Conclusion	280
Injunctive relief	282
Section 12 HRA and Press Freedom	284
Likelihood of Success at Trial	285
‘Parallel Analysis’	289
Conclusion	291
11 Conclusion	293
<i>Select Bibliography</i>	299
<i>Index</i>	315

<http://www.pbookshop.com>