Human Rights Law
The Human Rights Act 1998
2037/3037
2060/3060

Structure of the Course
2 hours of lecture per week during 10 weeks. Total: 20 lectures.
1 tutorial (1 hour) every 3 weeks. Total: 3 tutorials.

Assessment
30 credit module: 1 essay of 3500 words maximum (valued at 50% of the course credit) to be handed in on 10 March 2009 + 1 exam of 2 hours (valued at 50% of the course credit).
15 credit module: 1 essay of 1750 words maximum (valued at 50% of the course credit) to be handed in on 12 January 2009 + 1 exam of 1 hour (valued at 50% of the course credit).

Formative Assessment
1 essay of 1500 words maximum to be handed in week 7 of Term 1.

Textbooks:

Legislation
OR

Recommended Additional Reading
Bonner, Fenwick and Harris-Short, 'Judicial Approaches to the HRA' (2003) 52 ICLQ 549-86.
Hazel, 'Reinventing the Constitution: Can the State Survive?' [1999] PL 84
Straw & Boateng, 'Bringing Rights Home: Labour's Plans to Incorporate the ECHR into UK Law' [1997] EHRLR 71
Wadham, John, 'A British Bill of Rights' in Blackburn & Plant, 'Constitutional Reform'

Background Reading

Electronic Resources
Parliament: http://www.parliament.uk
The Constitution Unit: http://ucl.ac.uk/constitution-unit
The US Constitution (text and information): http://www.lib.uchicago.edu/e/law/legis.html
Database of the European Convention on Human Rights: http://www.echr.coe.int/
Constitutions of the World: http://confinder.richmond.edu

As this is a contemporary and dynamic subject it is also important that you use newspapers, radio and television in order to develop and maintain an interest and critical understanding of relevant current events.
Course Outline

PART I The concept of Human Rights

1. The development of laws
2. Historical development: The emergence of domestic human rights law
3. Into the Human Rights era

PART II The United Kingdom and Human Rights: The European Convention on Human Rights

1. Introduction

2. The supervisory organs under the ECHR
   1.1. The European Court of Human Rights
   2.2. The Committee of Ministers of the Council of Europe
   2.3. The Secretary General of the Council of Europe

3. ECHR case law and the United Kingdom
   3.1. Article 2: Right to life
   3.2. Article 3: Prohibition of torture
   3.3. Article 4: Prohibition of slavery and forced labour
   3.4. Article 5: Right to liberty and security
   3.5. Article 6: Right to a fair trial
   3.6. Article 10: Freedom of expression
   3.7. Article 14: Prohibition of discrimination

PART III The Human Rights Act 1998: Historical Background

1. Reasons justifying the non-incorporation of the ECHR into the UK domestic legal system

2. Arguments in favour of the incorporation of the ECHR into the UK domestic legal system

3. Towards the incorporation of the ECHR into the UK domestic legal system
   3.1. Human Rights Organizations
   3.2. Judicial steps
      3.2.1. Cases
      3.2.2. Extra-judicial steps
   3.3. Political steps
PART IV The Legal nature of the Human Rights Act 1998

1. The Human Rights Act 1998 and Parliamentary Sovereignty
   1.1. The constitutionality of the Human Rights Act 1998
   1.2. The increasing power of the judiciary: Towards judicial 'activism'?
   1.3. The legal value and significance of the Human Rights Act 1998

   2.1. Towards judicial 'supremacism'?
   2.2. The safety net provided by Section 19 of the Human Rights Act 1998
   2.3. The notion of judicial deference

3. Case Study: Anti-terrorism legislation
   3.1. Anti-terrorism law including control order legislation
   3.2. Case law
   3.3. Political statements
PART V The Human Rights Act Mechanism


   2.1. The content and meaning of Section 2
   2.2. The limits to Section 2
       2.2.1. The limited impact of the Strasbourg case law
       2.2.2. The limited role of the judiciary in the definitional scope of Convention rights

   3.1. The content and meaning of Section 3
   3.2. The limits to Section 3
   3.3. Case law
       3.3.1. R v A (No. 2) [2002]
       3.3.2. R v Lambert [2001]
       3.3.3. Re S (Care Order: Implementation of Care Plan) [2002]
       3.3.4. R v Offen [2001]
       3.3.5. Poplar Housing and Regeneration Community Association Ltd v Donoghue [2001]
   3.4. Interplay of Section 2 and Section 3 of the Human Rights Act 1998
       3.4.1. The impact of the Strasbourg judicial reasoning
       3.4.2. The abrogation of the doctrine of precedent

   4.1. The meaning and content of Section 4 of the HRA 1998
       • The temporal framework
       • The position of the executive
   4.2. The role of domestic courts
   4.3. Case law
       - R v Secretary of State for the Home Department, ex parte Anderson [2002]
       - Bellinger v Bellinger [2003]
       - A v Secretary of State for the Home Department [2004]
       - R (on the application of H) v Mental Health Review Tribunal, North & East London Region [2001]
       - D v Secretary of State for the Home Department [2002]
       - International Transport Roth GmbH v Secretary of State for the Home Department [2002]
       - R (on the application of Morris) v Westminster City Council [2004]
   4.4. Interplay between Section 3 and Section 4 of the Human Rights Act 1998
       - Ghaidan v Godin-Mendoza [2002]
       - R (Hooper) v Secretary of State for Work and Pensions [2002]
       - R (on the application of Rusbridger) v Attorney General [2003]
5. **Section 19 of the Human Rights Act 1998: Statements of compatibility**

6. **Section 10 of the Human Rights Act 1998: Power to take remedial action**

   
   7.1. The concept of public authority
   
   7.1.1. ‘Pure’ public authorities
   
   7.1.2. ‘Hybrid’ or quasi-public authorities
   
   7.1.3. Private bodies
   
   7.2. The positive obligation of the courts
   
   7.3. Definitions of public authorities
   
   7.3.1. Judicial definitions
   
   - Aston Cantlow Parochial Church Council v Wallbank [2003]
   
   7.3.2. Parliamentary debates
   
   7.3.3. Relevant case law
   
   - Poplar Housing and Regeneration Community Association Ltd v Donoghue [2001]
   
   - Smart v Sheffield City Council [2002]
   
   - R (A) v Partnerships in Care Ltd [2002]
   
   - Aston Cantlow Parochial Church Council v Wallbank [2003]
   
   - R (Heather) v Leonard Cheshire Foundation [2002]
   
   7.4. The proportionality test and the judicial deference to decisions of public authorities
   
   - Farrakhan v Secretary of State for the Home Department [2002]
   
   - R (Pearson and Martinez) v Secretary of State for the Home Department [2001]
   
   - International Transport Roth GmbH v Secretary of State for the Home Department [2002]
   
   - R (Prolife Alliance) v British Broadcasting Corporation [2003]

8. **Section 7 of the Human Rights Act 1998: Proceedings against public authorities**

   8.1. The question of limitation periods for bringing proceedings under the HRA 1998

   8.2. The concept of victim
   
   8.2.1. Definitional aspects
   
   8.2.2. The Strasbourg case law
   
   8.2.2.1. The Strasbourg case law as regards the different categories of potential applicants
   
   - Individuals
   
   - “Non-governmental organisations”
   
   - A “group of individuals”
   
   8.2.2.2. The Strasbourg case law as to the victim requirement
   
   - The potential victim
   
   - The indirect victim
   
   - Waiver of rights as nullifying the status of victim
   
   8.2.3. The issue of establishing standing before UK courts
8.2.3.1. The exclusion of hypothetical cases
8.2.3.2. The exclusion of pure (core) public authorities
8.2.3.3. The inclusion of potential victims
- R on the application of H v Ashworth Hospital Authority [2001]
- Hirst v Parole Board [2002]
- R on the application of Hooper v Secretary of State for Work and Pensions [2005]
8.2.3.4. The inclusion of relatives of a victim
8.2.3.5. The inclusion of plaintiffs before the European Court of Human Rights
8.2.3.6. The inclusion of non-nationals and of individuals living outside the UK
- A v Secretary of State for the Home Department [2004]
- R on the application of Farrakhan v Secretary of State for the Home Department [2001]
- Singh v Entry Clearance Officer New Delhi [2004]
- R on the application of Al-Skeini v Secretary of State for Defence [2004]
8.2.3.7. The special case of public-interest bodies
- Horvath v Secretary of State for the Home Department [2001]
- Sepet v Secretary of State for the Home Department [2003]

9. Section 8 of the Human Rights Act 1998: Judicial remedies (damages)
9.1. The exclusion of Article 13 of the ECHR
  9.1.1. The applicability of Article 13 of the ECHR
  9.1.2. Reasons for the non-incorporation of Article 13 of the ECHR
9.2. Section 8 (1) of the Human Rights Act 1998
  9.2.1. ‘Effective’ compensation
  9.2.2. ‘Just’ compensation
9.3. Section 8 (2) of the Human Rights Act 1998
9.4. Section 8 (3) of the Human Rights Act 1998
9.5. Section 8 (4) of the Human Rights Act 1998 and the determination of damages
  9.5.1. The Strasbourg principles
  9.5.2. The concept of ‘just satisfaction’
    9.5.2.1. Financial loss
    9.5.2.2. Non-financial loss
    9.5.2.3. Costs and expenses

14.1. Article 15 of the ECHR
14.2. The UK and derogations
14.3. Section 16 of the Human Rights Act 1998: Period for which designated derogations have effect

15.1. Article 57 of the ECHR
15.2. Article 31 (1) of the 1969 Vienna Convention on the Law of Treaties
15.3. The UK and reservations
15.4. Section 17 of the Human Rights Act 1998: Periodic review of designated reservations


18 Schedules to the Human Rights Act 1998
- Schedule 1: The Convention
- Schedule 2: Remedial orders
- Schedule 3: Derogation and Reservation
- Schedule 4: Judicial pensions