
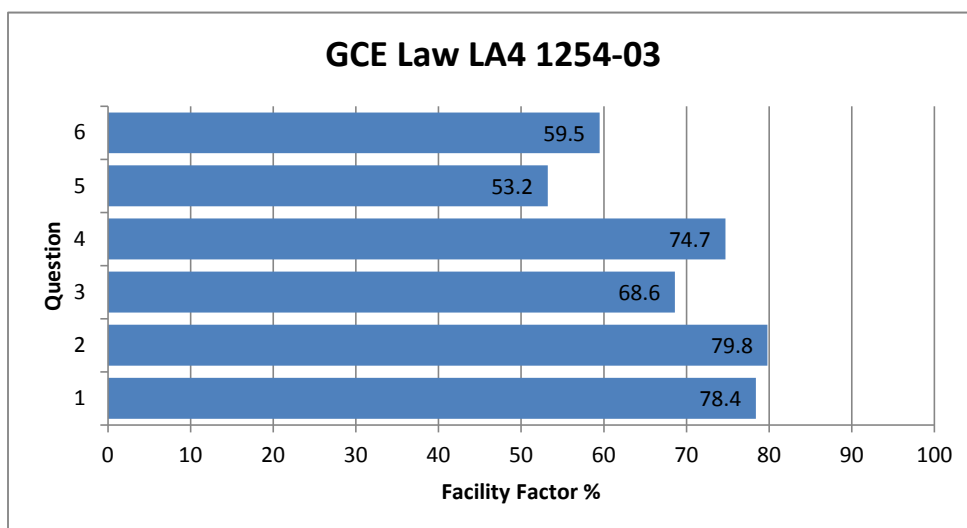


GCE Law LA4 1254-03

All Candidates' performance across questions

 <i>Question Title</i>	<i>N</i>	<i>Mean</i>	<i>S D</i>	<i>Max Mark</i>	<i>FF</i>	<i>Attempt %</i>
1	208	19.6	4.4	25	78.4	83.5
2	225	19.9	4.9	25	79.8	90.4
3	13	17.2	6.7	25	68.6	5.2
4	50	18.7	4.5	25	74.7	20.1
5	60	13.3	6.9	25	53.2	24.1
6	185	14.9	5.5	25	59.5	74.3



Option 3: Freedom of the Individual and Protection of Human Rights

SECTION A

*Answer **two** questions from this section.*

1. “The introduction of a Bill of Rights would overcome the limitations of the Human Rights Act 1998.” Discuss. [25]

1. ~~The~~ The Human Rights Act 1998 was an Act set up to give citizens rights. There are many articles with the Human Rights Act that protect and give people rights. Starting from Article 1 to Article 13. Some of these articles include Article 2 the right to life, Article 3 the right not to be subjected to inhumane or degrading treatment, Article 8 right to privacy and Article 10 right to freedom of expression.

There are many restrictions on some of the Articles, therefore Article 10 right to freedom of expression can be withheld if necessary, in the interest of national security.

The human rights court can only hear an individual's claim if it is recognised by the state as a breach of the individual's human rights. The UK didn't bring the convention into domestic law until 1998 therefore before then a citizen would have to go to the European court. Pretty v UK 2002 and Goodwin v UK 2002.

The Human rights act gives positive rights and not just liberties. The rights given under the ECHR were directly enforceable to the UK which meant there was no need to apply to go to Strasbourg, ~~Ref~~ Section 7. Before the Human Rights Act 1998 it could take up to 6 years to get a case to Strasbourg.

Section 2 of the Human Rights

Act 1998 states that a judge must refer to case law to help them make a decision that is relevant to the given case. Some people argue that Section 2 gives a weak obligation of judges, due to no independence. Section 3 of the Human Rights Act states that 'as far as it is possible to do so legislation must be read and given effect in a way that is compatible with the convention rights'.

When a judge is interpreting laws, he must be mindful of what the person is arguing. If that person's human rights cannot be upheld then the higher courts are able to issue a declaration of incompatibility under Section 4 of the Human Rights Act. Bellenger 2003.

Section 6 states that it is unlawful for public authorities to act in such a way that is incompatible with the Convention Rights. Public Authorities include local or central governments, police, NHS etc. The meaning of public bodies was discussed in Donoghue 2001.

There are also limitations to the Human Rights Act, they include the fact that legislation that is not compatible is still valid and judges cannot strike it out, thus upholds parliamentary sovereignty. However if the court find out legislation is not compatible they

can again issue a declaration of incompatibility Bellenger 2003.

There are both Advantages and disadvantages to the Human Rights Act 1998. The advantages being it ~~endows~~ provides rights for the public, and a disadvantage being it isn't specific about who it protects.

A Bill of Rights is a written constitution of separate documents which contain the basic rights of citizens. The UK and Israel are the only countries that don't have a Bill of Rights system, America, China and most of Europe do, however it's only as effective as the state that is enforcing it.

The UK's rights are held under the Human Rights Act 1998. This legislation can be repealed against at any time by any Government, thus doesn't do well when protecting the public.

A Bill of Rights gives us control over the executives, by doing a check on the huge powers of executives. The courts can decide not to apply a piece of legislation if it isn't compatible with the Bill of Rights. The Judiciary state that judges should ensure that all laws are compatible with the convention rights.

The Human Rights Act isn't entrenched so can be repealed against at any time, if a Bill

of Rights was introduced then this would be entrenched.

Some people say we do need a Bill of Rights in the UK because of the Repeals against the Human Rights Act. Many say that the HRA is not adequate to modern society and so doesn't provide political, social or economic rights. Whereas if a Bill of rights was introduced all of the above would be covered.

Some people believe we do not need to introduce a Bill of rights into the UK because they believe that our rights are already adequately protected, they also believe if we introduce a Bill of Rights there will be an increase on judicial judges powers because they won't be elected. They also believe that a Bill of Rights is too difficult to change and it blocks out an reform system.

if a Bill of Rights was introduced into the UK this would mean the limitations may change, maybe then there will be not Parliamentary Sovereignty. However if the Bill of Rights was introduced it could mean that legislation that is not compatible is not longer valid and may be able to be struck out, then being more effective. In conclusion I believe that the introduction of the Bill of

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The Bill of Rights would overcome the limitations of the HRA 1998 through their many aims and reasons. The British Bill of Rights would be more British than the HRA which was taken from the European Convention of Human Rights. It would give British people ownership and a better understanding. Furthermore the Bill would overcome the problems of S2 when in conjunction with S3 and S6. It would therefore limit the HRA as judges would not have to abide by S2 and follow persuasive precedents. The Bill of Rights would also include additional rights such as, right to a trial by jury and ~~socio-economic~~ socio-economic development. Another limitation the Bill of Rights would aim to overcome is ~~S10~~ S10 HRA the fast track procedure as this allows laws to be amended quickly. The Bill would also set out clearer guidelines for judges to follow. According to the Conservatives the ~~Bill~~ HRA is a charter for criminals, especially terrorists. Therefore the aims of the Bill of Rights would be to overcome the limitations imposed by the HRA.

However, even though there are limitations on the HRA there are some factors of the Bill of Rights that would have a negative effect. The Bill would be entrenched, ~~and~~ meaning that it would be extremely difficult to change. This would mean that it would not be able to develop with the needs of society, unlike the HRA. Furthermore, the HRA was only implemented in 1998 and is a relatively new law. It has not had time to develop. Another factor is that a Bill of Rights and the HRA are simply the same thing. Moreover, it would be extremely costly and it has not been proven that it

would have the desired effect and overcome the limitations of the Human Rights Act 1998.

With that being said, a Bill of Rights Commission went ahead to try and tackle the limitations of the HRA. However after a majority vote it came back as being ~~not~~ inconclusive. After all of the factors of the Bill of Rights were put forward, many people still had doubts as to whether it would be able to overcome the problems with the Bill of Rights.

The response from the Commission was mixed. The Commission did not see the need to include additional rights as the HRA was up to date with society and this was not seen as a limiting factor. Moreover, the members of the judiciary among the Commission did not see that there was a need for clearer guidelines. This would limit their judicial creativity. The HRA currently allows for the judges to interpret the ^{words} ~~text~~ as far compatible with the law under S.3. ~~Taking~~ They believed that taking away this right would severely limit their judicial powers. Furthermore the removal of the fast track procedure would mean that laws would no longer be able to be amended quickly. Offending laws would have to be used. The Commission also discovered that if the Conservatives would replace the HRA then citizens would no longer be able to sue public bodies under S.2.

The ~~for~~ limitations of the HRA ~~would be difficult~~ ^{would be} difficult to overcome by the Bill of Rights because there are many similarities between them. In a sense the Bill of Rights is a new name for the ~~the~~ HRA. With that being said it would mean that unlike the HRA, citizens would be free from the precedent of the ECtHR. The UK would not have to follow their precedent as it would be able to use its own. This would give the UK more freedom and independence and therefore allow for more judicial ~~and~~ creativity, which is currently limited by the Human Rights Act.

~~Over~~

Overall the introduction of a British Bill of Rights would not overcome the limitations of the Human Rights Act. This is because it has not been tested, the government cannot be sure that it would be effective in this country. Furthermore the Human Rights Act has been implemented for less than twenty years and has not had time to fully develop. There have been no reasons to believe that the Act is doing an insufficient job at protecting the citizens. For the Bill of Rights to be considered as replacement, something drastic needs to go wrong with the HRA. The HRA currently does not impose ~~limits~~ limitations and therefore the Bill of Rights would not be beneficial in society. ~~The HRA~~ Currently, there is no need for the Bill of Rights to be introduced as the Human Rights Act is working efficiently.

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Option 3: Freedom of the Individual and Protection of Human Rights

SECTION A

*Answer **two** questions from this section.*

- 2.** To what extent does the Equality Act 2010 provide a comprehensive system of protection against unjustifiable discrimination? [25]

2. The Equality Act ^(EA) ~~was~~ was passed in 2010 with an aim to simplify the laws on discrimination. Prior to the EA, ~~the~~ under common law there were no laws against discrimination. There was ~~then~~ the protection against discrimination under Article 14 of the European Convention of Human Rights (ECHR). However there was still no comprehensive system against discrimination in place and unjustifiable discrimination was still occurring. This led to the passing of the Race Relations Act 1965 and the Sex Discrimination Act 1975. These ~~Acts~~ ^{Acts} protected the two most common areas of discrimination. However ~~it~~ ^{there} were still areas that were not covered under these laws. The introduction of the Equality Act in 2010 then provided a comprehensive system.

The introduction of the Equality Act ^{aimed} ~~aim~~ to take all of the discrimination laws, simplify them and put them under one Act. The Act had some main aims to improve the protection, such as, ban age discrimination outside of the workplace, strengthen the protection for the disabled, give more protection to the carers of the disabled ^{and} to get rid of gender discrimination within the workplace, ~~and to~~ The Act listed nine protected characteristics that were covered under the Act, these were, age, gender, disability, race, gender reassignment, marriage and civil partnerships, pregnancy and maternity and religion and belief. The aims and characteristics set out under the Act provided for a clear and comprehensive system of protection against unjustifiable discrimination.

The Equality Act pointed out five areas of prohibited conduct, they are, direct discrimination, indirect discrimination, failure to make reasonable adjustments for the disabled, harassment and victimisation. Under S.14 of the EA 'direct discrimination' is when a person treats another less favourably because that person possesses a certain characteristic. For example, not employing an individual because of their sexuality. Direct discrimination is the most common and blatant form of discrimination and

it is the easiest to prove. Under this section the rules of ~~direct under the Equality Act~~ direct discrimination are clear, therefore showing that the system is comprehensive in protecting citizens from discrimination.

Indirect discrimination, under ~~the~~ ^{S.19} Equality Act is when a particular provision, criterion or practice is applied which disadvantages a certain group of people. A case that shows indirect ~~discrimin~~ discrimination is Mandla v Dowell Lee. Indirect discrimination is not as easy to prove as direct, therefore showing that the system in place for protection against this type of prohibited conduct is not as comprehensive as for direct. Unlike direct, indirect is discrimination towards a group of people not an individual.

The third type of prohibited conduct is ~~the~~ held under S.20 Equality Act. Failure to make reasonable adjustments for the disabled is possibly the least common type of prohibited conduct. The section states that this type occurs when a certain provision, criterion or practice is imposed that would highly disadvantage a disabled person. An example of the failure to make reasonable adjustments can be seen in Allen v RBS.

Under S.24 of the Equality Act Harassment is stated as the creation of a hostile or intimidating environment. There are three types of harassment defined under the Act, general, sexual or rejection of sexual. Harassment is most commonly found in the workplace. A case example of harassment is in ~~Legoland v Jenkins~~ Jenkins v Legoland Windsor Park. Under the Equality Act a comprehensive system is offered to citizens to protect them from this type of prohibited conduct.

The final type of prohibited conduct defined under the Equality Act is victimisation. This is defined under S.26 of the Act. Victimisation is when a person ~~make another~~ discriminates against another person ~~because~~ because they ~~p-~~ believe that person does a protected act or is going to commit a protected act. An example of victimisation would be missing out on a

promotion in work because your manager thought you were homosexual. ~~Victimisation~~ Under the Equality Act victimisation is no longer held under the same definition as discrimination. Therefore now offering a more comprehensive system of protection for citizens.

The protection that is offered to UK citizens under the Equality Act is sufficient as it offers us much more protection than in previous years. The Act explains ~~when~~ what counts as unjustifiable discrimination through a comprehensive system. The ~~A~~ protection had made significant improvement since being implemented and it has been made easier for UK citizens to act against discrimination. We now have our own law to follow rather than the ECHR.

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Option 3: Freedom of the Individual and Protection of Human Rights

SECTION A

*Answer **two** questions from this section.*

4. “The safeguards surrounding the powers of the police to conduct secret surveillance are inadequate.” Discuss. [25]

4. Before 1985 there were no regulations to control ^{the police copying our} State Surveillance, the Home Office just gave guidelines. There had to be regulations put in place because surveillance was seen to invade peoples privacy. Article 8. Right to privacy under the Human Rights Act is being breached. Malone 1979 challenged the fact that there were no regulations to protect us or our rights so because of this the European Convention of Human Rights added regulations to protect us.

As of 1985 there was a new Act imposed called the Interception of communications Act 1985. This Act gave regulations on only mail and telephone interceptions. However bugging was still unregulated. To gain a warrant under this Act there must be adequate grounds met. There were three grounds which were given under Section 2. The grounds were, it must be in the interest of national security, there must be danger of a serious crime or

lastly it must be to safeguard the economic well-being of the UK.

Section 3 states that the warrant must be specific, it must give a specific name and also a specific address.

Section 4 states that it must be personally signed by the home secretary or in urgent cases the home office official.

A warrant is issued for an initial 2 months and then an ~~is~~ renewed 1 month in the case of the police and 6 months in the case of security services. There is no absolute limit which could be argued doesn't protect us. The biggest criticism is that of who is authorising the warrant. In this case it's the home secretary, this is argued to give no independent scrutiny so therefore shouldn't be allowed. Maybe a judge in a court could authorise it, maybe this would give more independence ~~is~~.

There was no protection from bugging until the Police Act 1997 was introduced as a result of Kahn 1996. Kahn challenged this and so the ECHR ordered for there to be a new law put in place. The Police Act states that there is no need for a warrant to enter premises. S.92 states that police have absolute immunity to criminal prosecution. It can be

argued they get immunity but what about us as citizens.

For a warrant to be issued under the Police Act 1997 there must be thought that the warrant will add substantial value to the case. The police must also undergo a proportionality test to see if it would be proportionate to issue them a warrant, all under RIPA 2000.

Section 7 creates a tribunal that considers claims made by people who believe they are or have been subjected to some sort of surveillance. It is the tribunals duty therefore to investigate as to whether a warrant has been issued and if it has, has it been issued effectively, was it proportionate, did it add substantial value to the case. However it is extremely hard, near enough impossible to prove that you have been subjected to any type of surveillance. No one in the UK has ever succeeded when taking their claim to a tribunal court.

Section 9 states that no questions can be asked and no evidence must be shown, this helps them in their case.

There has been more protection over intrusive surveillance because they brought in an independent commissioner to review

the authorisation, this independent commissioner is usually a retired judge. It could be argued that it has provided protection, ~~but~~ only as but not far enough because we still have police authorising the police and this can be seen as bias and so unfair to us ~~and~~ it doesn't provide any independent protection.

RIPA 2000 was then brought in. RIPA 2000 covers all types of surveillance, from intrusive, directed mail and bugging. RIPA 2000 also authorises other bodies to apply for the authorisation of surveillance, for example customs.

RIPA 2000 also gives a distinction between intrusive and direct surveillance. Intrusive surveillance is all about putting surveillance devices on property or in private vehicles, so bugging. This type of surveillance has to be authorised by a chief constable. Intrusive surveillance lasts for an initial 3 months and then renewed indefinitely. This could again be argued to give no protection to us and go against our rights e.g. Article 8 right to privacy.

Directed surveillance is authorised by a superintendent, it is believed it needs to be authorised by a person of a higher rank. Maybe the chief constable, just like intrusive surveillance.

Both intrusive and directed surveillance have advantages and disadvantages and they both must be authorised before putting them to work. If you wanted to argue against this then you could only take your claim to the RIPA tribunal.

In conclusion the powers of the police to conduct state surveillance has been argued against a lot. Many believe it is inadequate because it produces a bias opinion. The police authorising the police is also bias because they all have a job to catch criminals therefore they will go to any lengths to ensure this happens.

The Acts being brought in allow a more independently scrutinised society, with more independent protection given to us.

I think its better now that the police need warrants because its not so easy to breach our human rights and theres a smaller chance that you will be subjected to surveillance when there is no relevant reason to be.

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argued they get immunity but what about us as citizens.

For a warrant to be issued under the Police Act 1997 there must be thought that the warrant will add substantial value to the case. The police must also undergo a proportionality test to see if it would be proportionate to issue them a warrant, all under RIPA 2000.

Section 7 creates a tribunal that considers claims made by people who believe they are or have been subjected to some sort of surveillance. It is the tribunals duty therefore to investigate as to whether a warrant has been issued and if it has, has it been issued effectively, was it proportionate, did it add substantial value to the case. However it is extremely hard, near enough impossible to prove that you have been subjected to any type of surveillance. No one in the UK has ever succeeded when taking their claim to a tribunal court.

Section 9 states that no questions can be asked and no evidence must be shown, this helps them in their case.

There has been more protection over intrusive surveillance because they brought in an independent commissioner to review

the authorisation, this independent commissioner is usually a retired judge. It could be argued that it has provided protection, ~~but~~ only as but not far enough because we still have police authorising the police and this can be seen as bias and so unfair to us and it doesn't provide any independent protection.

RIPA 2000 was then brought in. RIPA 2000 covers all types of surveillance, from intrusive, directed mail and bugging. RIPA 2000 also authorises other bodies to apply for the authorisation of surveillance, for example customs.

RIPA 2000 also gives a distinction between intrusive and direct surveillance. Intrusive surveillance is all about putting surveillance devices on property or in private vehicles, so bugging. This type of surveillance has to be authorised by a chief constable. Intrusive surveillance lasts for an initial 3 months and then renewed indefinitely. This could again be argued to give no protection to us and go against our rights e.g. Article 8 right to privacy.

Directed surveillance is authorised by a superintendent, it is believed it needs to be authorised by a person of a higher rank. Maybe the chief constable, just like intrusive surveillance.

Both intrusive and directed surveillance have advantages and disadvantages and they both must be authorised before putting them to work. If you wanted to argue against this then you could only take your claim to the RIPA tribunal.

In conclusion ~~The~~ powers of the police to conduct state surveillance has been argued against a lot. Many believe it is inadequate because it produces a bias opinion. The police authorising the police is also bias because they all have a job to catch criminals therefore they will go to any lengths to ensure this happens.

The Acts being brought in allow a more independently scrutinised society, with more independent protection given to us.

I think it's better now that the police need warrants because it's not so easy to breach our human rights and theres a smaller chance that you will be subjected to surveillance when there is no relevant reason to be.

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SECTION B

Answer one question from this section.

6. Study the text below and answer the questions based on it.

“The European Court of Human Rights treats the Convention as a living instrument which must be interpreted in the light of present day conditions. This means that the doctrine of precedent does not operate in the way that stare decisis operates in Common Law jurisdictions. Instead, the Court regards its previous decisions as a starting-point rather than as binding precedent, and any part of the judgement may provide guidance for the interpretation of the Convention in later cases.”

- (a) Explain the nature of the European Convention on Human Rights. [11]
- (b) Evaluate the operation of judicial precedent in the law of England and Wales. [14]

6a)	The European Convention of Human Rights was a body set up after WWII. It it was set up in 1950 to because of all the atrocities committed in WWII.
	The <u>ECHR</u> had 3 aims in

which they worked towards. The first aim was the identification of a number of mainly civil and political rights that were central of the democracy and civil society. The second aim being to impose an obligation on each state to secure the rights of their own jurisdiction. The final aim was to get their own machinery for the enforcement of the rights.

As well as there being aims there were also rights. There were Articles which issued human rights, ~~there~~ some of these articles were Article 2 - right to life, Article 8 right to privacy, Article 10 right to freedom of expression.

Some of the rights had restrictions, therefore Article 10 the right to freedom of expression can be withheld if necessary in the interests of national security.

The human Rights court can only hear an individual's claim if it is recognised by the state as a breach of the individual's human rights. The UK didn't bring the convention rights into the domestic law until 1998. Until then a citizen would have to go to the European Court.

When taking a claim. Pretty v UK 2002. The human Rights Act gives positive rights not just liberties. The Rights given under the ECHR were directly

enforceable to the UK without any need to apply to go to Strasbourg Section 7.

Section 2 of the Human Rights Act 1998 states that judges must follow case law to help them make decisions that are relevant to the case. Some say section 2 gives a weak obligation to judges.

Section 3 states that as far as it is possible to do so, legislation must be read and given effect in a way which is compatible with the convention rights.

When a judge is interpreting laws, he must be mindful of what the person is arguing. If the person's human rights cannot be upheld, then higher courts are able to issue a declaration of incompatibility under Section 4.

Bellenger 2003.

Section 6 states that it is unlawful for public authorities to act in such a way that is not compatible with the European convention rights. Public bodies include, local/central government, police and NHS etc. The meaning of public bodies was discussed in Donoghue 2001.

There are also limitations to the HRA 1998, they include that legislation that is not compatible with the European convention rights are still valid and judges can't

Strike them out. However if courts find out it is not compatible they can issue a declaration of incompatibility s.4. Bellenger 2003.

There are Both advantages and disadvantages of the HRA, an advantage being it protects citizens rights. A disadvantage being it isn't flexible.

6b). Precedent is known as 'stare decisis' (1) Precedent promotes conformity, fairness and certainty.

Precedent is concerned with the ^{Court} Hierarchy. The Supreme Court is the highest appeal court for Civil and criminal law. It binds all courts below and was bound by its own decision per London tramways 1979. The next Court is the court of appeal.

the court of appeal is bound by the Supreme court, its not bound where the previous decision resulted in the incorrect

conviction of a defendant R v Taylor 1990. The next court is the High

Court, this is bound by all of the above and binds all courts below. The High Court is split

into 3 divisions, The Queens bench, the Chancery and the family division. The Courts under the High court include the

Crown court and the magistrates and also the privy council, they all are bound by above courts.

There are 4 binding elements in precedent. These elements are, the material statement facts, Ratio decidendi (reasons for the decisions), obiter dicta (things said by the way) and the verdict.

The house of lords practice Statement. Before 1966 the House of lords was bound by its own previous decision unless made per incurrium. (when its right to do so) so if it is made per incurrium or if a mistake has been made they can overrule the decision. Anderton 1985 got overruled by Shivpuri 1997. This also happened in R v R 1991.

There are 5 ways in which we can avoid awkward precedent. By Overruling, when a higher court overrules a lower court, Following, when precedent made earlier is followed, Distinguishing, when lower court points to ~~the~~ material differences in the application of different principles, Departing, when court can depart from there previous decision and Reverse, when a higher court can change the decision of the lower court.

Section 2 of precedent states that judges must look at case law when deciding.

Cases that have developed precedent include Donoghue 1932, Gillick 1987 and FitzPatrick 1990.

There are many advantages

and disadvantages of precedent. The advantages being it gives impartial rights, it gives just rights, it gives practical rules, it is flexible, it promotes certainty. The disadvantages of precedent would be that it is very complex, it is also very rigid and lastly it doesn't give any democracy.

(1) (To stand by a previous decision).

(2) Some say this is good because it gives them a chance to give their decision if it is necessary or in best interests.

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1+2

10+1

21



6(a) The European Convention of Human Rights is the basic base of the Human Rights Act. It contains articles that are extremely influential on British law. Prior to the Human Rights Act, British citizens would use the ECHR and take their case to Strasbourg where the European Court of Human Rights is. The ECHR is made up of residual freedoms.

Prior to the Human Rights Act citizens followed the precedents of the ECHR. However under the HRA we now have many of our own rights. These rights can be absolute, qualified or limited. The ECHR is the base to s.3, s.4 and s.10 of the HRA.

s.3 allows a judge in UK court to interpret the words of a statute as far compatible with the law. However, if the words change the meaning of the law then it is incompatible.

s.4 allows a judge in UK court to issue a declaration of incompatibility if the law is incorrect, they can then issue a f. put the offending law on a fast track procedure under s.10. This sends the offending law

b The judge must use the "bad" law on the case in front of them and sends the offending law back to Parliament to be amended. There is also s.2 which states that UK courts should follow the persuasive precedents of the European Court of Human Rights.

The current approach from s.3 is laid out in Ghaidan v Godin-Mendoza.

The European Convention of Human Rights is the foundation for British Human Rights law. Many of the protections in the Human Rights Act are taken from the Convention.

6(b) Precedent allows for a judge to follow a previous case that has very similar factors. There are different types of precedent, which are binding, persuasive and original. Each judge is bound by the precedent that by the court above them. All of the UK courts are bound by the precedents set in the European Court of Justice. When deciding what to do with a case, the judge has four options available when it comes to precedent, they can either follow, distinguish, overrule or reverse.

The first option to follow is when the judge simply follows the past precedent. This occurs when the facts of the cases are extremely similar. This type of operation does not allow for any judicial creativity as the judge is not suggesting any amendments. However it shows that the judge has respect for the decision of the court above him/her.

The second option available is distinguish. This is when a judge can distinguish between certain factors of the case. They can then implement their own decision. This option gives judges more judicial creativity than to just follow precedent. They are able to implement their own decisions. The option of distinguish can be seen in the case of Balfour v Balfour and Merrill v Merrill.

The next option available to a judge is to overrule the past decision. However this option differs in the Supreme Court and Court of Appeal. The Supreme Court has more creativity than the Court of Appeal because they are able to overrule, with the permission from the House of Lords.

In the case of London Street Tramways v London County Council it was held that with the Practice Statement they could overrule 'where it appears right to do so'.

However when Lord Denning tried to issue a Practice Statement for the Court of Appeal Civil Division in Davis v Johnson it was reversed by the House of Lords. This tells us that the Court of Appeal does not have as much judicial creativity and freedom as the Court of Appeal Supreme Court.

The final option is to reverse the past precedent. This

is completely getting rid of it and introducing a new precedent. This option allows for the most judicial creativity, however it does not respect the decisions made of the other judges. It gives a judge the most freedom.

The operation of judicial precedent in the law of England and Wales is often restricting on judges. The majority of the time judges are unable to make their own decisions. For example, the Magistrates Court is bound by all other criminal courts above it. There should be imposed ~~to~~ limitations and exceptions imposed to improve ~~the~~ the ~~total~~ ~~laws~~ law of precedent.

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The operation of judicial precedent in the law of England and Wales is often restricting on judges. The majority of the time judges are unable to make their own decisions. For example, the Magistrates Court is bound by all other criminal courts above it. There should be improved limitations and exceptions imposed to improve the law of precedent.



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