

Family Law Lecture 2

- This lecture considers human rights and family law
- 1st part, generally, 2nd part, how HR have impacted family law
- HR good because create baseline
- But they are minimal, so this is a criticism
- Although states can create stronger ones if they wish
- In this first lecture, considering the HR important to family law
- First is ECHR
- Second is UNCRC (UN Convention Rights on Children)
 - ECHR is important as part of our law, incorporated by the HRA 1999
 - S.6 HRA
 - Courts must decide cases in a way compatible by the ECHR
 - S.3
 - Courts must incorporate legislation which is compatible
 - But sometimes, this isn't possible
 - Wording of statute isn't compatible
 - Here, judge makes note of incompatibility, declare this, and leave for parliament
- UNCRC
 - Not in our law
 - No need for it to be incorporated, nor any future desire
 - But is is persuasive, and courts link it
 - But **not binding**
 - Important because it sets out rights for children, as ECHR is silent on children's rights generally
 - This is because it was written in 1950, and little awareness for children to have rights guaranteed
 - UNCRC important because it sets out rights for children
 - Very broad
- ECHR Important rights
 - Art 3
 - No one subjected to torture or inhuman treatment or punishment
 - Requires state to protect citizen
 - Infringes right if they do not take steps to stop this
 - However, this does not just prohibit states from torturing citizens, but requires positive action
 - So if one individual is suffering at hands of another, they must take positive action to stop this

Family Law Lecture Notes 2 E

Frederick Pollock



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