

Assignment Cover and Feedback Sheet

Module code & title: _____

Registration Number

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You can find this on [LEAP](#) or [MyEssex](#)

Assessment Information

Word Count

This excludes footnotes/endnotes and bibliography.

Declaration:

- I have read and understood the University Regulations on Academic offences.
- I certify that the attached is all my own work and that the word length stated above is accurate

Marking and Feedback

Mark

Penalty

Final Mark

Reason for penalty and marks deduction:

- Please contact Bev Jackson for support with academic writing skills

First Marker _____

If in moderation sample:

Second Marker/Moderator _____

Essay Feedback: Level 6

	Upper 1 st (80+)	1 st (70-79)	2.1 (60-69)	2.2 (50-59)	3 (40-49)	Fail (under 40)
Research	Identifies an extensive range of relevant case law, statutes, academic commentary and policy documents, demonstrating substantial, systematic, in depth research beyond the set material	Identifies a wide range of relevant cases and statutes, academic commentary and policy documents, demonstrating substantial, systematic research beyond the set material.	Identifies a range of relevant cases and statutes, academic commentary and policy documents, with evidence of research beyond the set material.	Identifies essential cases, statutes, academic commentary and policy documents, though there may be minor errors or omissions; attempts research beyond the set material	Identifies some essential cases statutes, academic commentary and policy documents, but with some errors or omissions; generally does not go beyond the set material	Identifies some materials but generally non-essential and/or not authoritative
Evaluation of Sources	Sources are perceptively evaluated for credibility and relevance; weight is given according to sophisticated or critically evaluated criteria	Sources are perceptively evaluated for credibility and relevance, with the wider context presented; weight is given according to clear criteria	Sources are evaluated for credibility and relevance; weight is given according to clear criteria	Sources are evaluated for credibility and relevance, but criteria may sometimes be unclear; sources are sometimes given inappropriate weight	Sources are often evaluated for credibility and relevance, but criteria are often unclear; sources are often given inappropriate weight	Sources are often not evaluated for credibility or relevance; weight is not accorded by clear criteria
Understanding of material	Original, systematic, critical understanding of the material	Sophisticated systematic critical understanding of the material	Systematic critical understanding of the material	Understands essential frameworks and engages critically with the material, though there may be some errors	Understands the essential framework but minimal critical engagement with the material; errors of understanding	No critical engagement; understanding is defective
Argument and structure	A compelling and novel response to, or novel insights into, the question, supported by a clearly structured narrative	A persuasive, very well supported and rigorous argument in response to the question, supported by a clearly structured narrative	A persuasive response to the question, supported by a clear structure	Responds to the question, though some material may not be relevant or relevant material omitted; appropriately structured	May not respond to the question directly though addresses broad topic; some material may not be relevant or relevant material omitted; structure may lack clarity	Significant passages of the work fails to respond to the question; work lacks structure
Language and presentation	Expression is fluent and with flair in formal written English; consistently uses legal and scholarly language; free from errors	Expression is clear and fluent, in formal written English; consistently uses legal and scholarly language; free from errors	Expression is clear and fluent in formal written English; uses legal and scholarly language; occasional errors	Expression is clear and effective in formal written English; uses legal and scholarly language; some errors	Expression is sufficiently clear and effective to communicate, generally in; some use of legal and scholarly language; errors may be frequent	Lack of clarity and/or errors impede(s) communication; legal or scholarly language infrequently used; frequent errors
Referencing and bibliography	Referencing is comprehensive and accurate, in accordance with OSCOLA. Bibliography is of a high standard, with no errors.	All sources are referenced fully and consistently, in OSCOLA. Bibliography is of a high standard, with minimal and minor errors.	All sources are referenced in OSCOLA, with occasional errors. Bibliography is complete and extremely well organised.	All sources are referenced in OSCOLA, but with some errors. Bibliography is complete and well organised.	Most sources are referenced; OSCOLA is followed but with some errors. Bibliography is mostly complete and organised.	Some sources are referenced but with frequent errors in OSCOLA. Bibliography is incomplete.

Problem question Feedback: Level 6

	Upper 1 st (80+)	1 st (70-79)	2.1 (60-69)	2.2 (50-59)	3 (40-49)	Fail (under 40)
Identifying legal issues within the facts	Identifies all key and minor issues; explains their significance with exceptional clarity and connection to wider context where relevant.	Identifies all key and minor issues; explains their significance persuasively and concisely with reference to wider context where relevant.	Identifies all key issues and several minor issues; explains their significance.	Identifies all key issues and may identify some minor issues, but with omissions or errors of understanding.	Identifies most key issues, but with omissions and/or problems of understanding.	Fails to identify several key issues.
Identifying and evaluating relevant law	Meticulous explanation of relevant legal framework; analyses wider legal context, areas of debate and academic literature; produces original interpretation of the law.	Meticulous explanation of relevant legal framework; analyses wider legal context and areas of debate; engages with academic literature where applicable.	Identifies relevant law well; aware of wider legal context and areas of debate; engages with academic literature where applicable.	Identifies relevant law well; aware of wider legal context and areas of debate; occasional minor errors only.	Essential relevant law identified, but with some errors of understanding.	Fails to identify most of the essential legal sources.
Applying the law to the facts	Applies law to produce detailed and highly persuasive conclusion with some originality; explains reasoning extremely well; explores alternative outcomes where applicable making reasoned choices between them.	Applies law to produce detailed and highly persuasive conclusion; explains reasoning well; explores alternative outcomes where applicable, making reasoned choices between them.	Applies law to produce persuasive and comprehensive conclusion; explains reasoning; explains alternative outcomes where applicable.	Applies law to all key issues; draws reasonable conclusions; explains reasoning; identifies alternative outcomes where applicable.	Applies law but only to key issues; some major errors or fails to fully explain reasoning.	Applies law to some key issues; some major errors or fails to provide reasoning.
Structure	Issues addressed by exemplary use of IRAC throughout; flows very well; efficient structure allows for a meticulous answer.	Issues addressed by effective use of IRAC throughout; flows well; efficient structure allows for a mostly meticulous answer.	Issues addressed by effective use of IRAC throughout; efficient structure allows for a concise and detailed answer.	Issues mostly addressed following IRAC; occasionally disorganised, unbalanced or repetitive.	Some attempt to use IRAC, but frequently disorganised, unbalanced or repetitive.	Portions of answer lack any coherent structure; no evidence of planning.
Language and presentation	Expression is fluent and with flair in formal written English; consistently uses legal and scholarly language; free from errors	Expression is clear and fluent, in formal written English; consistently uses legal and scholarly language; free from errors	Expression is clear and fluent in formal written English; uses legal and scholarly language; occasional errors	Expression is clear and effective in formal written English; uses legal and scholarly language; some errors	Expression is sufficiently clear and effective to communicate, generally in; some use of legal and scholarly language; errors may be frequent	Lack of clarity and/or errors impede(s) communication; legal or scholarly language infrequently used; frequent errors
Referencing and bibliography	Referencing is comprehensive and accurate, in accordance with OSCOLA. Bibliography is of a high standard, with no errors.	All sources are referenced fully and consistently, in OSCOLA. Bibliography is of a high standard, with minimal and minor errors.	All sources are referenced in OSCOLA, with occasional errors. Bibliography is complete and extremely well organised.	All sources are referenced in OSCOLA, but with some errors. Bibliography is complete and well organised.	Most sources are referenced; OSCOLA is followed but with some errors. Bibliography is mostly complete and organised.	Some sources are referenced but with frequent errors in OSCOLA. Bibliography is incomplete.

Please note: not all criteria are equally important when awarding a mark. These are the criteria that are used to assess the standard of your work. This guide gives you details of the different areas that are considered when your work is marked and what your work is expected to demonstrate in each degree category. This is a guide rather than a science and not all criteria have the same value.

Overall Comments and Feedback:

Chosen Question

Please type your question in full if you had to choose one out of a list. If there was only one question, it is not necessary to repeat the question here.

Question 3

Explain the UK's 'mirror principle' in relation to the European Convention on Human Rights. Critically discuss how this principle has influenced the interpretation of human rights within the UK legal system. Provide relevant examples to support your answer

Title: The UK's 'Mirror Principle' and its Impact on Human Rights Interpretation

Introduction:

The 'mirror principle' as stipulated by the Human Rights Act 1998 (HRA) amounts to stand for a stone upon which an alignment with European Convention on Human Rights (ECHR) can rest¹. The roots of ECHR rights are indicative of the UK's commitment to seamlessly integrating domestic legislation with this mentality. Individual empowerment allows for right to ECHR incorporation into national courts directly, providing immediate protection. The requirement on the UK courts to interpret legislation in such a way as to make ECHR rights prevail also spills over into enforcing 'the mirror principle' as an instrument of obtaining international human rights standards within the national system. Such big cases as *R(Ullah) v Special Adjudicator*[2004] evidence its use². Although instrumental, ongoing debates stress the requirement for careful refining of a proposal to accommodate comprehensiveness and potential difficulties related to protecting parliamentary sovereignty in safeguarding rights protected under ECHR.

Discussion

1. Understanding the 'Mirror Principle':

UK commits that it will align its legal system with ECHR through the concept of "mirror principle". This idea merges the complexity of UK law with international human rights principles. 'Mirror concept' of the Human Rights Act 1998 (HRA), which stipulates that ECHR would mirror in national laws, establishing a deep interaction between domestic and international law.

The fact that the HRA goes on to explicitly mention about "mirror principle" makes it apparent how important this concept is to British human rights. First Section 1(1) of the HRA demands UK law to embody "the rights and freedoms guaranteed by European Convention on Human Rights". This ECHR amendment to the legislation allows for "mirror principle" in British law.³ The "mirror principle" presupposes that ECHR rights have to be totally incorporated into local law, thus connecting the international and national jurisprudence. National law should embrace rights from ECHR. This provides evidence of human rights commitment and the knowledge of increasing ECHR obligations on domestic courts.⁴

When the official HRA accepts the "mirror principle", UK human rights are better protected. The HRA incorporates the ECHR into national law so that people can pursue their Convention rights by using local courts in a faster and easier manner. The "mirror principle" and national legal adjudication are two concepts that balance each other out since courts must decide on the legislation based upon ECHR rights.

R (Ullah) v Special Adjudicator (2004) is a leading case of "mirror principle". It set a precedent for the fact that UK courts need to rely and follow ECHR verdicts, demonstrating how national human rights laws are connected with those of European level. It means that local legal

¹ McGoldrick D, 'The United Kingdom's Human Rights Act 1998 in Theory and Practice' (2001) 50 *International and Comparative Law Quarterly* 901.

² LORDS H and CORNHILL LBOF, '*R (on the Application of Ullah) v. Special Adjudicator-Do v. Secretary of State for the Home Department*'

³ Mowbray A, *Cases, Materials, and Commentary on the European Convention on Human Rights*. Oxford University Press. (3rd edn, 2012)

⁴ Hillebrecht C, 'The Power of Human Rights Tribunals: Compliance with the European Court of Human Rights and Domestic Policy Change' (2014) 20 *European Journal of International Relations* 1100.

interpretations and ECHR standards were parallel under the “mirror principle”.⁵ The “mirror principle” of connecting the UK law to international human rights principles has been productive despite criticism. Others contend that ECHR integration does not protect all rights. Parliamentary sovereignty is questioned when it concerns ECHR rights that may be altered or abolished. These negotiations show that there is a need for an increasingly complex and changing “mirror principle” approach to deal with rising problems while keeping UK human rights safe.

The UK’s attempts to harmonize with its legislation the international human rights standards largely depend on what is called the “mirror principle” While this idea based HRA navigates a complicated interplay of domestic and international laws It supports people to claim their rights under the domestic law, which structures human right defense. The “mirror principle” supports a legal space where human rights are actively shielded.

2. Influence on Human Rights Interpretation:

Basically the ‘mirror principle’ involves creating an opportunity to empower people and allow them claim their ECHR rights directly before national courts. This is a major difference from the more traditional way that international human rights treaties often do not directly influence domestic legislation⁶. The ‘mirror principle’ has succeeded in removing these barriers effectively enough to allow the citizens to exercise their ECHR rights through local courts that will enable them better to safeguard human right within UK.

One important aspect of the ‘mirror principle’ is that UK courts are legally obliged to interpret legislation so as to align it with ECHR rights and ensure the preservation of those rights.⁷ The aim of this duty is to ensure compliance between the domestic laws and internationally recognized standards as reflected in ECHR. A good way of seeing this obligation to interpret is through such case as Ghaidan v Godin-Mendoza (2004) when the House of Lords read and interpreted issues relating to Rent Act Consolidation 1977 in ways that there was compliance with rights under ECHR, especially those pertaining to sexual orientation discrimination.

It also transforms statutory interpretation in a way that it mirrors the ‘mirror principle’. Courts are not just obliged to consider the rights protected under ECHR, but they must also interpret legislation in a manner that allows avoiding conflicts with these, whenever feasible. One of the cases where this approach was taken is R (Daly) v. Secretary of State for the Home Department 2001, in which it found that Misuse of Drugs Act 1971 should be construed to encompass a consideration towards respecting right within ECHR relating to a fair trial.⁸

UK law has been moulded by the ‘mirror concept enshrining human rights as real and enforceable matters of the legal system. 2017 Supreme Court damages claims case under HRA clarified the ‘mirror principle’, where it awarded compensations to violators of human rights who are public authorities. This decision emphasized the ‘mirror concept’ that ECHR violations could indeed have a tangible impact on people and governments.⁹ This concept ‘has changed human rights

⁵ Croquet NAJ, ‘The International Criminal Court and the Treatment of Defence Rights: A Mirror of the European Court of Human Rights’ Jurisprudence?’ (2011) 11 Human Rights Law Review 91

⁶ McCrudden C, ‘Human Dignity and Judicial Interpretation of Human Rights’ (2008) 19 European Journal of International Law 655.

⁷ Andenas M and Borge E, ‘National Implementation of ECHR Rights: Kant’s Categorical Imperative and the Convention’ [2013] SSRN Electronic Journal

⁸ R (Daly) v Secretary of State for the Home Department (UK House of Lords)

⁹ Shellum A, ‘The Case for a Human Rights Act Based Approach to Unfair Dismissals Engaging Convention Rights: Challenging Judicial Attitudes and Assessing Potential’ (2017) 2 LSE Law Review 1

protection in the UK. In this way, the idea more effectively ensures fundamental rights as individuals can rely on their national courts that will be able to directly apply ECHR rights and domestic legislation must construed accordingly. The ‘mirror concept’ is incorporated into the UK legal system as a result of its use in various cases.

3. *The Impact on Legal Cases:*

One significant case that highlights the effect of the ‘mirror principle’ is *R (Ullah) v Special Adjudicator* [2004]. *1924 Houses Ltd* concerned the duty of UK courts to apply decisions from ECHR. In this instance, Ullah, a Pakistani national facing deportation contended that his removal would be contrary to his right not subjected to torture or inhuman treatment as prescribed by Article 3 of the ECHR.¹⁰ The House of Lords stated that it was the responsibility of UK courts to take into consideration decisions reached by ECHR since such an international court had some authority in guiding national courts on how ECHR rights should be interpreted and applied domestically. One of the most important principles that emerged during this period was what might be called, following Biggs, ‘the mirror principle’.

The judgement of *R (Gentle and Another) v Prime Minister* [2008] further emphasizes the application of ‘mirror principle’.¹¹ On one side were the claimants who alleged that by sending troops without a proper plan about post-war security, Britain breached its soldiers’ right to life. In a case in the House of Lords ‘mirror principle’ was applied and it stressed that governmental actions should be according to ECHR, so with regard for this case rulers’ decisions fell within the scope of Article 2.¹² The same ‘mirror principle’ that impacts the individual rights also has a bearing on governmental acts to ensure that state decisions match ECHR.

In the privacy rights, ‘mirror principle’ was adopted as seen in *R (Beghal) v Secretary of State for the Home Department* [2015]. This concerned an application to overturn the utilisation of Schedule 7 powers under Terrorism Act 2000 that permitted questioning people at airports. The defendant claimed that the powers violated his right to respect for private and family life protected by Article 8 of ECHR.¹³ The Court of Appeal had the first case on considering “mirror principle” powers should be read and utilized by overriding consideration with Article 8 that privacy rights must balance against national security issues.¹⁴

Collectively, these cases show the practical effects of ‘mirror principle’ to human rights interpretation in UK. By recognizing the jurisdiction of the ECHR and requiring compliance with ECHR rights across different settings, this principle acts as a driving force in securing alignment between national law and international human rights. The ‘mirror principle’ not only enables people to claim their rights at the local courts but also obliges the Government and other public bodies to intertwine their actions with those laid down in ECHR, thereby promoting stronger human right protection laws within a nationally used legal framework.

¹⁰ Palmer S, *A Wrong Turning: Article 3 ECHR and Proportionality*, vol Vol. 65, (Cambridge University Press 2006) <<https://www.jstor.org/stable/i405873>>

¹¹ Fenwick H and Masterman R, ‘The Conservative Project to “Break the Link between British Courts and Strasbourg”: Rhetoric or Reality?’ (2017) 80 *The Modern Law Review* 1111

¹² McCubbins MD, ‘Legislative Process and the Mirroring Principle’ in Claude Menard and Mary M Shirley (eds), *Handbook of New Institutional Economics* (Springer US 2005).

¹³ McDonagh M, ‘Section 44 of the Terrorism Act 2000; Counter Terrorism Legislation; Stop and Search Powers; Metropolitan Police Service; Section 47 A Terrorism Act 2000’ <<https://repository.londonmet.ac.uk/id/eprint/7397>>

¹⁴ Kinyanjui A, *Data Protection as a Human Right: Balancing the Right to Privacy and National Security in Kenya* (Doctoral Dissertation, University of Nairobi). (University of Nairobi School of Law,)

4. Critique of the 'Mirror Principle':

The “mirror principle” that matches the British law with principles of international human rights has been challenged. Some critics argue that it fails to recognize some rights which leads to gaps and inequalities. The reliance on legislative sovereignty as a principle complicates the government’s ability to modify or rescind ECHR rights.

One of the criticisms is related to selective integration of ECHR rights into domestic legislation.¹⁵ Others argue that the ‘mirror principle’ does not go far enough because it requires interpretation to take into account ECHR rights. In the case of *R (Limbuela) v Secretary of State for the Home Department*, House of Lords held that reluctance by government to allow asylum seekers work was not contrary to this provision under ECHR.¹⁶ Though the ruling could affect the right to respect for private life (Article 8) and right to employment Article 14 in conjunction with Article 14, the court noted that it was still within or margin of appreciation granted by a government.¹⁷ Critics comment that such verdicts lead to variations concerning rights protection and require ECHR of rights despite parliamentary sovereignty underlies the ‘mirror principle’, which is criticized¹⁸. This constitutional concept says Parliament is the highest legal authority and cannot pass laws which future Parliaments can’t alter. Critics believe that this concept poses a threat to ECHR rights under UK legislation. In *R (Jackson) v Attorney General* [2005], the House of Lords stated that Hunting Act 2004, which made it illegal to hunt with dogs did not go against European Convention on Human Rights.¹⁹ The court highlighted legal sovereignty, stating that the judiciary cannot displace clear statutes. This ruling questioned the ‘mirror principle’ as it demonstrated Parliament had powers to limit ECHR rights.

Arguments about whatever have been lately made against the Human Rights Act 1998 raise concerns as to whether government can alter or abolish ECHR protections. Attempts have been made to abolish or change this statute; one can see that the ensuring of parliamentary autonomy and protection for human rights is difficult in *R (Miller) v Secretary of State for Exiting The European Union* [2017] Critics warn that law reform, particularly those affecting the Human Rights Act may compromise the ‘mirror principle’ and contribute to a weakening of international human rights norms.²⁰

The ‘mirror principle’ has assisted UK law in incorporating ECHR rights with some defects. Critics argue the UK legal system does not effectively protect human rights due to selective nature of incorporation and reliance on parliamentary power.²¹ As the debate proceeds it is essential to find a balance between strong human rights protection and UK constitutional norms.

¹⁵ Roger Masterman, 'Deconstructing the Mirror Principle' (May 2012) in R Masterman and I Leigh (eds), *The UK's Statutory Bill of Rights: Constitutional and Comparative Perspectives* (Proceedings of the British Academy, 2013) <https://ssrn.com/abstract=2084090>.

¹⁶ S. York, 'The Law of Common Humanity: revisiting Limbuela in the 'Hostile Environment' (2017) 31(4) *Journal of Immigration, Asylum and Nationality Law* 308.

¹⁷ O.M. Arnardóttir, 'The differences that make a difference: recent developments on the discrimination grounds and the margin of appreciation under Article 14 of the European Convention on Human Rights' (2014) 14(4) *Human Rights Law Review* 647.

¹⁸ P.C. Oliver, 'Sovereignty in the Twenty-first Century' (2003) 14 *KCLJ* 137.

¹⁹ T. Mullen, 'Reflections on Jackson v Attorney General: questioning sovereignty' (2007) 27(1) *Legal Studies* 1.

²⁰ A. Young, 'R.(Miller) v Secretary of State for exiting the European Union: thriller or vanilla?' (2017) 42(2) *European Law Review*.

²¹ R. Bellamy, 'Political constitutionalism and the human rights act' (2011) 9(1) *International Journal of Constitutional Law* 86.

Conclusion:

In conclusion, the 'mirror principle' is undoubtedly pivotal in determining how human rights are interpreted and protected under UK legislation. It gave individuals a direct channel to defend their ECHR rights in national courts, where they could address human rights violations more promptly and locally. The fact that UK courts are legally obligated to interpret legislation in a way consistent with ECHR rights enhances the harmony between national and international legal frameworks. However, the struggles and criticism reveal that perhaps 'mirror principle' needs to be further developed considering emerging challenges. From cases like R (Limbuela), which illustrates the selective implementation of ECHR rights into domestic legislature, it becomes apparent that what is needed is a more total and explicit context in order to guarantee satisfaction for all fundamental entitlements.

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