

# A PRACTICAL GUIDE TO THE LAW OF DEPRIVATION OF LIBERTY



**BEN TROKE**  
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# The Law Of Deprivation Of Liberty

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## **The Law Of Deprivation Of Liberty:**

*The Law of Deprivation of Liberty* Fred Cohen, 1991      *A Practical Guide to the Law of Deprivation of Liberty* Ben Troke, 2024-02-12

When arrangements are made for someone in their best interests that amount to a deprivation of their liberty for example placing someone in a care home against their wishes how does the law protect their rights The law in this vital area has been a mess In 2014 a parliamentary committee described the current legal framework the Deprivation of Liberty Safeguards DoLS as not fit for purpose and that was before a Supreme Court judgment Cheshire West just a few days later meant that the system has been overwhelmed with vastly more cases than it was built or resourced for In 2019 legislation was passed with the bare bones of a new system the Liberty Protection safeguards LPS to replace DoLS But despite a consultation in 2022 on a draft Code of Practice which added some detail it has now been announced that the LPS will not be implemented before the next general election expected to be in late 2024 and so in practice may well never be implemented at all Without those long awaited reforms we will still have to work with the old system and all the problems it had that LPS was supposed to fix notably That DoLS does not apply beyond care homes and hospitals and so anyone deprived of their liberty in other settings such as their own family home or supported living can only have this authorised by a court order Similarly DoLS only applies over the age of 18 but this leaves a gap for 16 17 year olds where again court orders are needed to authorise any deprivation of liberty as the courts have only recognised parental consent to avoid a deprivation of liberty where the child is under 16 and Even where the DoLS system does apply over 18 and in care homes and hospitals there is a colossal mismatch between the system s resources and the workload with backlogs of a year or more for authorisations to be processed and tens of thousands of people unlawfully deprived of their liberty This book will look at The background and context to the law on deprivation of liberty Article 5 of the European Convention of Human Rights The Bournewood case and the birth of DoLS Cheshire West the definition of a deprivation of liberty and how this has applied in a range of settings from the family home to residential care and hospital How DoLS works in practice including the key safeguards Deprivation of liberty for children and young people Court applications for deprivation of liberty in the community The interface between DoLS and the Mental Health Act Consequences and compensation for an unlawful DoL The Law Commission s review of DoLS the evolution of the LPS and how it would have worked and the prospects of reform now and Making the best of the system we have for now

ABOUT THE AUTHOR Ben Troke is a solicitor and a mediator with 25 years experience working in health and social care acting for the NHS and private sector providers all over the country His particular interest is in decisions about mental capacity medical treatment and deprivation of liberty and he regularly deals with urgent applications to court in emergency situations Ben is independently rated as one of the leading practitioners in the country in the Court of Protection He currently sits on the Law and Ethics Policy Unit of the Faculty of Intensive Care Medicine and the Law Society s Mental Health and Disability Committee and has a decade of experience of sitting on the

ethics of clinical practice committee of a large acute NHS Trust Ben is a regular speaker at conferences nationwide and often provides training in person and online

### **Deprivation of Liberty in the Shadows of the Institution** Lucy

Series, 2022-03-29 ePDF and ePUB available Open Access under CC BY NC licence During the 20th century the locus of care shifted from large institutions into the community However this shift was not always accompanied by liberation from restrictive practices In 2014 a UK Supreme Court ruling on the meaning of deprivation of liberty resulted in large numbers of older and disabled people in care homes supported living and family homes being re categorized as detained Placing this ruling in its social historical and global context this book presents a socio legal analysis of social care detention in the post carceral era Drawing from disability rights law and the meanings of home and institution it proposes solutions to the Cheshire West ruling s paradoxical implications

*Deprivation of Liberty* Law Society, 2016

### **Theory and Practice of the European Convention on Human Rights** Pieter van Dijk, Godefridus J. H. Hoof, G. J. H. Van Hoof, 1998-06-03

This is the third edition of Van Dijk and Van Hoof s classic work Theory and Practice of the European Convention The developments which have taken place under the Convention since the second edition was published have been numerous and comprehensive and the Convention has gained a central position in the legal systems of many European countries Three Protocols have been added to the Convention the number of Parties to the Convention has grown from twenty two to no less than thirty six and the case law concerning the Convention has increased significantly Like its predecessors this third edition offers a full description of the present procedural practice and case law of both the European Commission and the European Court of Human Rights and is an indispensable guide Protocol No 11 to the Convention which will enter into force by the end of 1998 will drastically change the supervisory system under the Convention establishing one Court This new Court will also perform the present functions of the Commission s procedures and working methods and by its case law concerning admissibility This new edition will therefore remain relevant for the practice and case law of the new Court for many years to come

*The International Criminal Tribunal for the Former Yugoslavia 2001-2002* André Klip, 2005

*The Law of*

*Deprivation of Liberty* Fred Cohen, 1980

### **The Future of Mental Health, Disability and Criminal Law** Kay

Wilson, Yvette Maker, Piers Gooding, Jamie Walvisch, 2023-09-15 This book brings together contributions from twenty three world leading scholars and commentators that address a range of contemporary and pressing international themes in mental health disability and criminal law The authors use the work of internationally renowned academic Emeritus Professor Bernadette McSherry as a springboard to reflect on recent developments in these areas of law and to anticipate the future directions they may take In doing so they aim to inform and inspire a new generation of mental health disability and criminal law scholars advocates and reformers The book is divided into four substantive sections reforming mental health and disability law regulating coercion and restrictive practices improving access to justice and the criminal law and transforming mental health law It also includes an introduction from the editors and an afterword from Emeritus Professor McSherry The

book is aimed at regulators policymakers lawyers clinicians consumer advocates and academics who are interested in the urgent and contentious issues surrounding the reform and development of mental health disability and criminal law It will help them understand the key issues and problems and presents suggestions for reform The book is interdisciplinary and international in its focus Chapters 9 and 13 of this book are freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution Non Commercial No Derivatives CC BY NC ND 4.0 license

*Blackstone's International Human Rights Documents* Alison Bisset, 2020 This work contains all the relevant regional and international instruments and covers the essential United Nations resolutions and international conventions

**Blackstone's International Human Rights Documents** Sandy Gandhi, 2012-08-16 Blackstone's Statutes have a 25 year tradition of trust and quality unrivalled by other statute books and a rock solid reputation for accuracy reliability and authority Content is peer reviewed to ensure a close map to courses Blackstone's Statutes lead the market consistently recommended by lecturers and relied on by students for exam and course use Each title is Trusted Ideal for exam use Practical Find what you need instantly Reliable Current comprehensive coverage The book is accompanied by an Online Resource Centre that provides guidance on how to use a statutes book a table showing the ratification of the Human Rights Instruments updates and weblinks

**Mental Health Law 2E A Practical Guide** Basant Puri, Robert Brown, Heather McKee, Ian Treasaden, 2012-04-27 Completely updated to reflect current changes in the law and in practice Mental Health Law A Practical Guide is a concise and approachable handbook to mental health law for students and professionals working in psychiatric settings Easy to read practical and illustrated with case examples and a wealth of practical advice to guide you through many complex legal issues Multidisciplinary approach written by specialist authors and key opinion leaders who understand the practical issues you face Fully updated and expanded to include the Mental Health Act 2007 and the Mental Capacity Act 2005 so that you are totally up to date Provides clear guidance practical pointers and all you need to know about mental health law implementation This authoritative guide will serve as a comprehensive introduction and long term resource manual for trainee and qualified psychiatrists as well as nurses social workers psychologists and occupational therapists working in mental health

**The Customary International Law of Human Rights** William A.

Schabas, 2021-06-24 Customary international law is one of the principal sources of public international law Although its existence is uncontroversial until now the content of customary international law in the area of human rights has not been analyzed in a comprehensive manner This book from one of international law's foremost scholars and practitioners provides an unparalleled account of the customary international law of human rights It discusses the emergence of this customary law the debates about how it is to be identified and the efforts at formulation of customary norms In doing so the book provides a useful and accessible introduction to the content of international human rights The author uses the Universal Declaration of Human Rights as a basis to examine human rights norms and determine whether they may be described as customary He

makes use of relatively new sources of evidence of the two elements for the identification of custom State practice and opinio juris In particular the book draws on the increasingly universal ratification of major human rights treaties and the materials generated by the Universal Periodic Review mechanism of the Human Rights Council The book concludes that a large number of human rights norms may indeed be described as customary in nature and that courts should make greater use of custom as a source of international law

**Article Thirty-seven** William A. Schabas, Helmut Sax, 2006 This volume constitutes a commentary on Article 37 of the United Nations Convention on the Rights of the Child It is part of the series A Commentary on the United Nations Convention on the Rights of the Child which provides an article by article analysis of all substantive organizational and procedural provisions of the CRC and its two Optional Protocols For every article a comparison with related human rights provisions is made followed by an in depth exploration of the nature and scope of State obligations deriving from that article The series constitutes an essential tool for actors in the field of children's rights including academics students judges grassroots workers governmental non governmental and international officers The series is sponsored by the Belgian Federal Science Policy Office

Philippine Governance and the 1987 Constitution Ricardo S. Lazo, 2009

Reform of the Federal Criminal Laws United States. Congress. Senate. Committee on the Judiciary. Subcommittee on Criminal Laws and Procedures, 1971

**The War Report** Annyssa Bellal, 2015-12-10 This War Report provides detailed information on every armed conflict which took place during 2014 offering an unprecedented overview of the nature range and impact of these conflicts and the legal issues they created In Part I the Report describes its criteria for the identification and classification of armed conflicts under international law and the legal consequences that flow from this classification It sets out a list of armed conflicts in 2014 categorising each as international non international or a military occupation with estimates of civilian and military casualties In Part II each of these conflicts are examined in more detail with an overview of the belligerents means and methods of warfare the applicable treaties and rules and any prosecutions for investigations into or robust allegations of war crimes Part III of the Report provides detailed thematic analysis of key legal developments which arose in the context of these conflicts allowing for a more in depth reflection on cross cutting questions and controversies The Report gives a full and accessible overview of armed conflicts in 2014 It should be the first port of call for everyone working in the field

**The Northeastern Reporter**, 1913 Includes the decisions of the Supreme Courts of Massachusetts Ohio Indiana and Illinois and Court of Appeals of New York May July 1891 Mar Apr 1936 Appellate Court of Indiana Dec 1926 Feb 1927 Mar Apr 1936 Courts of Appeals of Ohio

**The American Convention on Human Rights** Ludovic Hennebel, Hélène Tigroudja, 2022 General obligations Civil and political rights Economic social and political rights Suspension of guarantees interpretation and application Personal responsibilities Inter American Commission on human rights responsibilities Inter American Court of Human rights Common provisions Signature ratification reservations amendments protocols and denunciation Transitory provisions

The Best Interests Assessor Practice Handbook Rachel

Hubbard, Kevin Stone, 2022-10-25 Essential reading for Best Interests Assessor students and practitioners this fully updated handbook gives practical advice on the legal aspects values and practice elements of the role     *New Medicalism and the Mental Health Act* John Fanning, 2018-08-09 Ten years have passed since the Mental Health Act MHA 2007 came into force in England An amending statute the Act reformed the MHA 1983 and reshaped the law governing the compulsory care and treatment of people suffering from mental disorders Primarily driven by concerns about risk it sought to remove legalistic obstacles to civil commitment and extend the law s coercive reach into the community At the time of its introduction the 2007 Act was written off as a retrograde step and a missed opportunity for radical rights focused reform Despite this little attention has been paid to its impact in the years since Published to coincide with the tenth anniversary of the 2007 Act this book offers a timely evaluation of mental health law and policy in England It argues that the current MHA defies easy categorisation within any of the descriptive models which have customarily narrated the mechanics of civil commitment namely legalism new legalism and medicalism It therefore makes the case for a new model new medicalism to account for the 2007 Act s enhancement of the discretion of mental health professionals for the express purposes of facilitating the management of situations of risk In doing so the book critically examines the problems inherent in civil commitment frameworks organised around the concept of risk explores the theoretical foundations of new medicalism considers the challenges facing proponents of future reform in the era of the UN Convention on the Rights of Persons with Disabilities and reflects on the 2007 Act s practical impact

## **The Law Of Deprivation Of Liberty** Book Review: Unveiling the Magic of Language

In a digital era where connections and knowledge reign supreme, the enchanting power of language has become much more apparent than ever. Its capability to stir emotions, provoke thought, and instigate transformation is really remarkable. This extraordinary book, aptly titled "**The Law Of Deprivation Of Liberty**," published by a very acclaimed author, immerses readers in a captivating exploration of the significance of language and its profound effect on our existence. Throughout this critique, we shall delve into the book's central themes, evaluate its unique writing style, and assess its overall influence on its readership.

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