CONTENTS

Ack	nowle	edgements	V
List	of Ca	ses xi	ii
			
Cha	apter	1. An Introduction to Domestic Abuse and Human Rights	1
1.	Intro	duction	1
2.	Term	ninology	1
3.	Lega	l Attitudes Towards Domestic Abuse	3
4.	Domestic Abuse in its Social Context		
5.	Priva	ncy	8
6.	Hum	an Rights	0
7.	Viole	ence against Women	5
8.	Outli	ine of the Coverage of this Book	7
Cha	apter :	2. The Nature of Domestic Abuse	9
1.	Intro	duction	9
2.		stics	
3.	Offic	ial Definitions	21
	3.1.	The World Health Organization	21
	3.2.	The Istanbul Convention	22
	3.3.	The Council of Europe	22
	3.4.	The European Commission	23
	3.5.	UK Law	23
	3.6.	Discussion of the Definitions	25
4.	Deve	eloping a Definition of Domestic Abuse	25
	4.1.	Coercive Control	
	4.2.	Intimate Relationship	32
	4.3.	Patriarchal Social Inequality	
		4.3.1. How Domestic Abuse Sustains Patriarchy	
		4.3.2. How Patriarchy Sustains Domestic Abuse	
5.	Geno	der and Domestic Abuse	
		Gender and Statistics	

Intersentia vii

Contents

	5.2.	Victims of Domestic Abuse Outside the Heterosexual
		Context
	5.3.	Problems with the Category 'Women'
		5.3.1. The Gender Binary
		5.3.2. Intersectionality
6.	Con	clusion: The Wrongs of Domestic Abuse
	6.1.	Loss of Freedom
	6.2.	A Breach of Trust 50
	6.3.	Attack on the Self
	6.4.	The Impact on Children
	6.5.	Public Harms
		3. The ECHR, the Istanbul Convention
an	d Don	nestic Abuse
1.	Intro	oduction
2.		ECHR
2.	2.1.	An Introduction
	2.2.	The Right to Protection
	٠.۵.	2.2.1. Article 2
		2.2.2. Article 2 and Domestic Abuse
		2.2.3. Article 3
		2.2.4. Article 3 and Domestic Abuse
		2.2.5. Article 6
		2.2.6. Article 8
		2.2.7. Article 8 and Domestic Abuse
		2.2.8. Article 13 and the Right to a Remedy
		2.2.9. Article 14
		2.2.10. Article 14 and Domestic Abuse
	2.3.	Balancing Different Rights 80
	2.4.	Losing Respect
	2.5.	Positive Duties on the State8
		2.5.1. The Level of Knowledge Required
		2.5.2. What is Required of the State?
		2.5.2.1. General Duties
		2.5.2.2. Specific Operational Duties94
	2.6.	Conclusion
3.	The	Istanbul Convention
	3.1.	An Introduction
	3.2.	Gender and the Istanbul Convention

viii Intersentia

	3.3.	Prevention	. 106		
	3.4.	Protection and Support	. 107		
	3.5.	Prosecution	. 108		
	3.6.	Policy Integration	. 110		
4.	Cone	clusion	. 111		
Ch	apter	4. Legal Responses to Domestic Abuse	. 113		
1.	Intro	oduction	. 113		
2.	The I	Range of Legal Responses	. 113		
3.	Problems with the Traditional Substantive Criminal Law's				
	Resp	oonse to Domestic Abuse	. 114		
	3.1.	The Photograph Approach	. 115		
	3.2.	The Nature of Harm in the Criminal Law	. 115		
	3.3.	An Example of the Problem of Traditional Criminal Law			
		and Domestic Abuse	. 117		
4.	The	Offence of Coercive Control	. 119		
	4.1.	The Definition of Coercive and Controlling	. 121		
	4.2.	Repeatedly and Continuously	. 122		
	4.3.	Personally Connected	. 122		
	4.4.	The Impact of the Behaviour	. 123		
	4.5.	The Required Mental State	. 124		
	4.6.	The Exclusion of Parents	. 125		
	4.7.	Defences	. 125		
5.	Shou	uld there be a Specific Domestic Abuse Offence?	. 126		
	5.1.	A Special Wrong?	. 126		
	5.2.	The Incident Approach	. 130		
	5.3.	Gender-Neutrality	. 131		
	5.4.	Distinguishing Abusive from Non-Abusive Behaviour	. 132		
	5.5.	The Required Mental State	. 134		
	5.6.	Defence	. 135		
6.	Victi	ims of Domestic Abuse and Defences	136		
	6.1.	Loss of Control	137		
	6.2.	Diminished Responsibility			
	6.3.	Self-Defence	142		
	6.4.	Conclusion on Defences for Victims of Domestic Abuse	. 144		
7.	Pros	Prosecution Policy in Domestic Abuse Cases			
	7.1.	Arguments for Pro-Prosecution Policies	146		
	7.2.	Arguments against Pro-Prosecution Policies			
	73	Conclusions on Prosecution Policy			

Intersentia ix

Contents

8.	Civil (Orders	153
		Who can Apply for these Orders?	
		Occupation Orders	
		A Human Rights Analysis	
9.	Non-I	Legal Approaches	157
10.		usion	
Ch	apter 5.	. Domestic Abuse and Children	159
1.	Introd	luction	159
2.	Statist	ics on Domestic Abuse and Children	161
3.	Statistical and Conceptual Links between Domestic Abuse		
	and C	hild Abuse	162
	3.1.	Statistical Links	162
	3.2.	Conceptual Similarities	163
4.	Witne	ssing or Living with Domestic Abuse as a Form	
	of Chi	ld Abuse	165
	4.1.	Being Harmed in the Incident	168
	4.2.	Children as Tools in the Abuse	169
	4.3.	Loss of Normality	170
	4.4.	Negative Role Modelling	170
5.	Abusii	ng the Maternal–Child Relationship is Abusing the Child \ldots	172
6.	Conta	ct and Domestic Abuse	174
	6.I. '	The Harm of Conflict	177
	6.2.	Parental Alienation	179
	6.3.	Downplaying the Severity of Abuse	184
	6.4.	Difficulties of Proof	185
7.	The Ca	ase for a Strong Presumption against Contact	
	where	Domestic Abuse has been Found	186
	7.1.	Domestic Abuse as Evidence of Bad Parenting	186
	7.2. 3	Responsibility for Behaviour	187
	7.3.	The Importance of the Child-Primary Carer Bond	188
8.	Child	Protection	188
9.	Huma	Human Rights	
10.	Concl	usion	192
Cha	apter 6.	. The Abuse of Parents by Children	195
1.	Introd	luction	195
2.		ics	

X Intersentia

3.	Denr	ntions
	3.1.	Coercive Control and Parental Abuse
	3.2.	Parental Abuse and Patriarchal Structural Inequality200
		3.2.1. Gender
		3.2.2. Motherhood
		3.2.3. Childhood
		3.2.4. Links with Domestic Violence and Witnessing It 205
4.	Tensi	ons in the Parental Abuse/Domestic Abuse Link 206
5.	Legal	Responses
	5.1.	Criminal Law
	5.2.	Civil Orders
	5.3.	Child Protection
6.	Non-	Legal Interventions
7.	Cond	clusion: Developing a Human Rights Approach 213
Ch	antan'	7. Elder Abuse
CII	apter	/. Elder Abuse
1.	Intro	duction
2.	Defin	ning Elder Abuse
	2.1.	Coercive Control
	2.2.	Intimacy
	2.3.	Patriarchy and Elder Abuse219
		2.3.1. Sexism
		2.3.2. Ageism
		2.3.3. Intersectionality and Elder Abuse
3.	Statis	stics on Elder Abuse
4.	'Care	giver Stress'
5.	Elde	Abuse and Domestic Abuse
6.	A Rig	ghts-Based Approach to Elder Abuse229
7.	Lega	Responses to Elder Abuse
	7.1.	Crime and Elder Abuse
		7.1.1. Gaps in the Current Law
		7.1.2. An Offence of Elder Abuse?
	7.2.	Rights of Protection
8.	Cond	clusion
Ch	apter	8. Concluding Thoughts
Ind	lex	

Intersentia xi