

# CONTENTS

<i>Foreword</i>	xi
<i>Preface</i>	xii
<i>Table of Legislation</i>	xiv
<i>Table of Cases</i>	xxxv

---

## PART I INTRODUCTION

1 INTRODUCTION	3
1 Government, Law and Justice	3
2 Characteristics of the Law	8
2 CONSTITUTIONAL FOUNDATIONS OF THE POWERS OF THE COURTS	15
1 Introduction	15
2 An Outline of the Substantive Principles Underpinning Administrative Law	15
3 Distinction between Appeal on Merits and Review	15
4 Parliamentary Sovereignty	16
5 Separation of Powers	23
6 Rule of Law	24
7 Ultra Vires	27

---

## PART II AUTHORITIES AND FUNCTIONS

3 THE CENTRAL GOVERNMENT	35
1 Introduction	35
2 'The Crown' Is the Monarch	35
3 The Legal Incidents of the Crown Being a Corporation Sole	38
4 Are the Crown's Powers Distinct from Other Public Bodies Created by Statute or Charter?	39
5 Additional Bases of the Crown's Powers	39
6 The Functions of the Central Government	44
7 Civil Service	52



8 Executive Agencies	55
9 The Contractualisation of Government	57
<b>4 LOCAL AND DEVOLVED GOVERNMENT</b>	<b>59</b>
1 Local Administration	59
2 Complaints against Local Government	69
3 Police	71
4 Devolution—Scotland and Wales	73
5 Scotland	75
6 Wales	80
<b>5 PUBLIC CORPORATIONS, PRIVATISATION AND REGULATION</b>	<b>83</b>
1 Public Corporations	83
2 The Mechanisms of Privatisation and Nationalisation	86
3 Regulation	87
4 Some Regulatory Mechanisms	88

---

### PART III EUROPEAN INFLUENCES

<b>6 THE EUROPEAN UNION</b>	<b>99</b>
1 A Brief History of UK Membership in the EU from 1973 to 2020 and the Profound Impact of EU Law on UK Domestic Law	99
2 The Legal Framework of the EU	100
3 EU Law: Conflicting Perceptions of Supremacy and Parliamentary Sovereignty	108
4 The Post-Brexit UK Regime	112
5 The EU–UK Trade and Cooperation Agreement	131
6 Conclusion	150
<b>7 PERSONAL RIGHTS AND FREEDOMS</b>	<b>152</b>
1 The European Convention of Human Rights (ECHR)	152
2 The Human Rights Act 1998 (HRA)	159

---

### PART IV POWERS AND JURISDICTION

<b>8 JURISDICTION OVER FACT AND LAW</b>	<b>183</b>
1 Objective Boundaries of Jurisdiction: The Limits of Discretionary Powers	183
2 The Power and Duty to Determine Jurisdictional Questions	184
3 Difficult Borderline Cases	187
4 Evaluative Words	188
5 Administrative Cases	189



6	The 'Original Jurisdiction' Fallacy	191
7	The Essential Legal Policy	192
8	Jurisdictional and Non-jurisdictional Questions of Law	192
9	All Errors of Law Now Reviewable	193
10	An Exception—Courts of Law?	201
11	Jurisdictional and Non-jurisdictional Fact	202
12	Disputed Questions of Fact	203
13	Findings, Evidence and Jurisdiction	204
14	The Malleable Boundary between Law and Fact	210
15	Summary of Rules	212
16	Error on the Face of the Record	212
9	PROBLEMS OF INVALIDITY	216
1	Collateral Proceedings	216
2	Partial Invalidity	223
3	Standard and Burden of Proof	225
4	Invalidity and Voidness	228

---

## PART V DISCRETIONARY POWER

10	RETENTION OF DISCRETION	243
1	Statutory Powers and Duties	243
2	Delegation	255
3	Surrender, Abdication, Dictation	265
4	Over-rigid Policies	267
5	Restriction by Contract or Grant	272
6	Estoppel	277
7	Waiver and Consent	283
8	Res Judicata	286
11	ABUSE OF DISCRETION	291
1	Discretion Limited by Law	291
2	The Justification for Review on Substantive Grounds	292
3	The Rule of Reason: 'Wednesbury Unreasonableness'	299
4	The Principle of Proportionality	313
5	Proportionality and <i>Wednesbury</i> Unreasonableness	325
6	The Rule of Reason: Particular Categories	328
7	Good Faith	352



---

 PART VI NATURAL JUSTICE

12 NATURAL JUSTICE AND LEGAL JUSTICE	357
1 Procedural Justice	357
2 Administrative Justice and Natural Justice	358
3 Post-war Vicissitudes	359
4 Natural Justice in the Common Law	360
5 The European Convention and Natural Justice in Administrative Proceedings	361
13 THE RULE AGAINST BIAS	367
1 Judicial and Administrative Impartiality	367
2 Causes of Prejudice	382
3 Effects of Prejudice: Void or Voidable?	386
14 THE RIGHT TO A FAIR HEARING	388
1 Audi Alteram Partem	388
2 Administrative Cases	391
3 The Retreat from Natural Justice: A Break with Tradition	394
4 The Right to be Heard Reinstated	395
5 Fair Hearings—General Aspects	400
6 Fair Hearings—Particular Situations	432
7 Procedural Legitimate Expectation	435
8 Exceptions	444

---

## PART VII REMEDIES AND LIABILITY

15 ORDINARY REMEDIES	449
1 Rights and Remedies	449
2 Actions for Damages	450
3 Injunctions	450
4 Declarations	455
5 Relator Actions	464
6 Enforcement of Duties	469
16 PREROGATIVE REMEDIES	472
1 Remedies of Public Law	472
2 Habeas Corpus	473



3	The Quashing Order (Certiorari) and the Prohibiting Order (Prohibition)	481
4	The Mandatory Order (Mandamus)	492
17	BOUNDARIES OF JUDICIAL REVIEW	505
1	Marginal Situations	505
2	Realms Beyond the Law	510
18	PROCEDURE OF JUDICIAL REVIEW	519
1	The Defects of Prerogative Remedies Prior to the Reforms of 1977	519
2	The Creation of the Application for Judicial Review and Subsequent Developments	521
3	The Divorce of Public and Private Law	542
19	RESTRICTION OF REMEDIES	557
1	The Old Law of Standing	557
2	The New Law of Standing	558
3	Later Decisions on Standing	563
4	Proposed Reforms on Standing	569
5	The Discretionary Nature of Remedies	570
6	Exhaustion of Remedies	574
7	Implied Exclusion	579
8	Protective and Preclusive (Ouster) Clauses	582
9	Exclusive Statutory Remedies	594
10	The Senior Courts Act 1981, Section 31(2a)	603
11	Default Powers	605
20	LIABILITY OF PUBLIC AUTHORITIES	608
1	Categories of Liability	608
2	Liability for Breach of Human Rights	608
3	Liability in Tort Generally	609
4	Negligence	614
5	Strict Liability— <i>Rylands v. Fletcher</i>	626
6	Breach of Statutory Duty	627
7	Misfeasance in Public Office	629
8	Statement of General Principles of Liability	633
9	Immunities and Time Limits	634
10	Liability in Contract	636
11	Liability to Make Restitution	640
12	Liability to Pay Compensation Where There Has Been No Tort or Breach of Contract	643



21 CROWN PROCEEDINGS	651
1 The Crown in Litigation	651
2 Liability in Tort	656
3 Liability in Contract	660
4 Remedies and Procedure	663
5 Statutes Affecting the Crown	667
6 Limitations of State Liability	669
7 Suppression of Evidence in the Public Interest	672

---

## PART VIII ADMINISTRATIVE LEGISLATION AND ADJUDICATION

22 DELEGATED LEGISLATION	685
1 Necessity of Delegated Legislation	685
2 Scope of Administrative Legislation	687
3 Legal Forms and Characteristics	693
4 Judicial Review	699
5 Publication	712
6 Preliminary Consultation	715
7 Parliamentary Supervision	717
23 STATUTORY TRIBUNALS	722
1 The Tribunal System: An Introduction	722
2 The 2007 Reforms	728
3 Procedure of Tribunals	735
4 Appeals on Questions of Law and Discretion	746
24 STATUTORY AND OTHER INQUIRIES	754
1 The System of Inquiries	754
2 Statutory Hearings	755
3 The Statutory Inquiry Proper	757
4 Complaints and Reforms	761
5 Law and Practice Today in Statutory Inquiries	765
6 Other Inquiry Procedures	778
<i>APPENDIX 1 Lord Diplock's Formal Statement on Judicial Review</i>	787
<i>APPENDIX 2 The Retained EU Law (Revocation and Reform) Bill 2022</i>	790
<i>Index</i>	801