

Detailed Contents

Preface		xi
Table of Cases		xvii
Table of Legislation		xxxiii
1	Constitutional Principles and the British Constitution	1
	Introduction	2
	Fundamental Ideas in Constitutional Theory	3
	The Variety of Constitutions	8
	The Existence and Nature of the UK Constitution	13
	The Political Constitutionalist Perspective	27
	Further Reading	34
2	The Nature and Role of Constitutional Conventions	35
	Introduction	36
	The Variety of Conventions	37
	Attempts to Define Conventions	40
	The Constitutional Role of Conventions	50
	Should Conventions be Codified?	54
	Further Reading	62
3	The Rule of Law and the Separation of Powers	63
	Introduction—The Theoretical Basis of the Rule of Law	64
	The Basic Idea of the Rule of Law: Government Under the Law or ‘Limited Government’	65
	Specific Principles Deriving from the Rule of Law	67
	The Rule of Law in the British Constitution	71
	The Separation of Powers	103
	Doubts as to the Relevance of the Separation of Powers Doctrine in the UK Constitution	107
	The Separation of <i>Functions</i> as between the Judiciary, Executive and Legislature	113
	Judicial Independence and the <i>Institutional</i> Overlap between the Judiciary and the Other Branches	117
	Ensuring Judicial Independence from the Executive: The Appointment and Dismissal of the Judges	125
	The Separation of Powers as a System of Checks and Balances	136
	Further Reading	138
4	Parliamentary Sovereignty	139
	Introduction	140
	The Nature of Parliamentary Sovereignty	140

	Possible Limitations on Sovereignty	143
	Further Reading	179
5	The European Union and Parliamentary Sovereignty	181
	Introduction	182
	The Position of the European Court of Justice	184
	The Position of the UK Courts	185
	Further Reading	198
6	Devolution	199
	Introduction	200
	Scottish Devolution	202
	Devolution, Federalism and 'Quasi-Federalism'	221
	The Scottish Government	223
	The Independence Referendum, the Smith Commission and the Scotland Act 2016	227
	The Scheme in Northern Ireland	236
	The Good Friday Agreement and the Northern Ireland Act 1998	238
	Devolution to Wales	248
	The 'West Lothian' Question, 'EVEL' and Regional Devolution	255
	Further Reading	261
7	The European Convention on Human Rights	263
	Introduction	264
	Selected Key Substantive Articles and ECHR Doctrines	266
	The Institutions for the Supervision of the Convention and the Right of Complaint	311
	Conclusions	317
	Further Reading	319
8	The Commons: Elections, Parties, Legislation and Scrutiny	321
	Introduction	322
	The Electoral System	322
	The Commons: Approval of Legislation	329
	The Commons as Scrutineer of the Executive	355
	The Select Committees	362
	Further Parliamentary Reform? The Impact of the Wright Committee	381
	Further Reading	382
9	The House of Lords and Reform	383
	Introduction	384
	Composition of the House of Lords and Party Balance	384
	Limitations on the Powers of the House of Lords	393
	The Work of the House of Lords	405
	Further Reform of the House of Lords	415
	Further Reading	435
10	Parliamentary Privilege	437
	Introduction	438
	The 'Internal' Privileges of Parliament	439

	Freedom of Speech	456
	Further Reading	470
11	Prerogative Powers	473
	Introduction	474
	The Nature and Extent of the Prerogative	475
	Personal Prerogatives	486
	Parliamentary Control over the Prerogative and Reform	487
	Control of the Prerogative by the Courts	499
	Further Reading	521
12	The Central Executive: Structures and Accountability	523
	Introduction	524
	The Prime Minister, Cabinet and the Civil Service	524
	Government Accountability and Responsibility	550
	Further Reading	571
13	Freedom of Information	573
	Introduction	574
	Freedom of Information in the UK Prior to the Freedom of Information Act	575
	The Freedom of Information Act 2000	577
	Conclusion	614
	Further Reading	615
14	Judicial Review: Availability, Applicability, Procedural Exclusivity	617
	Introduction	618
	What Kinds of Body Are Susceptible to Review?	618
	Judicial Review Procedures and Remedies: Recent Reforms and Procedural Exclusivity	629
	Who May Apply for Judicial Review?	646
	Can Judicial Review Be Excluded?	654
	Attempts to Restrict/Exclude Judicial Review of Asylum Decisions: The 'Super Ouster'	656
	Further Reading	660
15	Grounds of Judicial Review	661
	Introduction	662
	The Rule Against Bias	664
	The Rule against Bias: Indirect Interests	667
	The Duty to Act Fairly	678
	Illegality	699
	Irrationality	742
	Further Reading	756
16	Ombudsmen	757
	Introduction	758
	The Position, Role and Work of the Parliamentary Ombudsman	760
	The Jurisdiction of the PO: Excluded Areas	765
	Access to the PO: The 'MP Filter'	769
	The Work of the PO: Remedies and Examples	773
	Accountability of the PO	783

	Other Ombudsmen	789
	Reform of the Public Sector Ombudsmen	790
	Conclusion	795
	Further Reading	795
17	The Traditional Protection of Civil Liberties in Britain and the Impact of the Human Rights Act 1998	797
	Introduction	798
	The Protection of Civil Liberties under the British Constitution pre-HRA	799
	The Bill of Rights Question	805
	The Human Rights Act 1998	808
	Proportionality, Deference and the 'Discretionary Area of Judgment'	864
	'Protecting Human Rights in the UK': Conservative Plans for a British Bill of Rights	874
	Conclusions	882
	Further Reading	884
18	Freedom of Expression	887
	Introduction	888
	Restraining Freedom of Expression to Protect the State or Government	890
	Restraining Freedom of Expression to Protect the Administration of Justice	928
	Restraining Freedom of Expression on Moral Grounds	943
	Further Reading	952
19	Police Powers: Crime Control, Counter-Terrorism, Public Order	953
	Introduction: Crime Control, Counter-Terrorism, Public Order	954
	Stop and Search Powers	957
	Powers of Arrest and Detention	969
	Redress for Police Impropriety	978
	Police Powers to Maintain Public Order	991
	Conclusions	1032
	Further Reading	1033
Index		1035