CONTENTS

Preface	xi
Table of Statutes	xiii
Table of European Legislation and International Conventions, Directives and Treaties	xxxiii
Chronological List of Statutes	XXXV
Table of Cases	xli

PART I INTRODUCTION

1	INTRODUCTION	3
	Government, Law and Justice	3
	Characteristics of the Law	8
2	CONSTITUTIONAL FOUNDATIONS OF THE POWERS OF THE COURTS	17
	The Rule of Law	17
	The Sovereignty of Parliament	21
	Government Subject to Law	27
	The Doctrine of Ultra Vires	30

PART II AUTHORITIES AND FUNCTIONS

3	THE CENTRAL GOVERNMENT	39
	The Crown and Ministers	39
	The Civil Service	44
	The Law of Crown Service	53
	Some Governmental Functions	59
	Complaints Against Administration	73
4	LOCAL AND DEVOLVED GOVERNMENT	94
	Local Administration	94
	Complaints Against Local Government	106
	Police	107

	Regional Development Agencies	110
	Devolution—Scotland and Wales	111
	Scotland	112
	Wales	116
5	PUBLIC CORPORATIONS, PRIVATISATION AND REGULATION	119
	Public Corporations	119
	The Mechanisms of Privatisation and Nationalisation	123
	Regulation	124
	Some Regulatory Mechanisms	126
	Regulation and Judicial Review	132

PART III EUROPEAN INFLUENCES

6	INCORPORATION OF EUROPEAN LAW	137
	European Human Rights	137
	The Human Rights Act 1998	142
	The Human Rights Act 1998 in Operation	147
	The European Union	161

PART IV POWERS AND JURISDICTION

7	LEGAL NATURE OF POWERS	179
	Sources of Power	179
	Express Requirements and Conditions	186
	Conclusiveness, Mistake and Fraud	193
	Power or Duty—Words Permissive or Obligatory	196
	Estoppel	199
	Waiver and Consent	201
	Res Judicata	204
8	JURISDICTION OVER FACT AND LAW	211
	Error Outside Jurisdiction	211
	Error on the Face of the Record	226
	Findings, Evidence and Jurisdiction	229
	Summary of Rules	236

CONTENTS

9	PROBLEMS OF INVALIDITY	237
	Collateral Proceedings	237
	Partial Invalidity	243
	Standard and Burden of Proof	246
	Invalidity and Voidness	250

PART V DISCRETIONARY POWER

10	RETENTION OF DISCRETION		259
	Discretionary Power		259
	Delegation		259
	Surrender, Abdication, Dictation		269
	Over-rigid Policies		270
	Restriction by Contract or Grant		276
	Estoppel–Misleading Advice		281
11	ABUSE OF DISCRETION		286
	Discretion Limited by Law		286
	The Justification for Review on Substantive Grounds		287
	Confusing Terminology		292
	The Rule of Reason		293
	The Principle of Proportionality		305
	The Rule of Reason: Particular Categories		315
	Categories of Unreasonableness		328
	Mixed Motives		349
	Good Faith	2	352
	Subjective Language		354
	Statutory Reasonableness		363

PART VI NATURAL JUSTICE

12 NATURAL JUSTICE AND LEGAL JUSTICE	371
13 THE RULE AGAINST BIAS	380
Judicial and Administrative Impartiality	380
Causes of Prejudice	395
Effects of Prejudice	400

vii

14	THE RIGHT TO A FAIR HEARING	402
	Audi Alteram Partem	402
	Administrative Cases	405
	Statutory Hearings	408
	The Retreat from Natural Justice	411
	The Right to Be Heard Reinstated	413
	Fair Hearings—General Aspects	418
	Legitimate Expectation	446
	Fair Hearings—Particular Situations	457
	Exceptions	468

PART VII REMEDIES AND LIABILITY	
15 ORDINARY REMEDIES	473
Rights and Remedies	473
Actions for Damages	474
Injunctions	474
Declarations	480
Relator Actions	489
Enforcement of Duties	496
16 PREROGATIVE REMEDIES	500
Remedies of Public Law	500
Habeas Corpus	501
The Quashing Order (Certiorari) and the Prohibiting Order (Prohibition)	509
The Mandatory Order	521
17 BOUNDARIES OF JUDICIAL REVIEW	534
Marginal Situations	534
Realms Beyond the Law	540
18 PROCEDURE OF JUDICIAL REVIEW	549
Introduction	549
The Defects of Prerogative Remedies Prior to the Reforms of 1977	549
The Creation of the Application for Judicial Review and	
Subsequent Developments	552
The Divorce of Public and Private Law	566

CONTENTS

19 RESTRICTION OF REMEDIES	582
The Old Law of Standing	582
The New Law of Standing	589
Discretion, Exhaustion, Implied Exclusion	599
Protective and Preclusive Clauses	610
Exclusive Statutory Remedies	621
Default Powers	631
20 LIABILITY OF PUBLC AUTHORITIES	635
Liability Under European Union Law	635
Liability for Breach of Human Rights	637
Liability in Tort Generally	642
Negligence	648
Strict liability— <i>Rylands</i> v. <i>Fletcher</i>	662
Breach of Statutory Duty	663
Misfeasance in Public Office	668
Statement of General Principles of Liability	673
Immunities and Time Limits	674
Liability in Contract	677
Liability to Make Restitution	682
Liability to Pay Compensation Where There Has Been No Tort or Breach of Contract	685
21 CROWN PROCEEDINGS	694
The Crown in Litigation	694
Liability in Tort	700
Liability in Contract	704
Remedies and Procedure	708
Statutes Affecting the Crown	712
Limitations of State Liability	714
Suppression of Evidence in the Public Interest	717

PART VIII ADMINISTRATIVE LEGISLATION AND ADJUDICATION

22 DELEGATED LEGISLATION	731
Necessity of Delegated Legislation	731
Scope of Administrative Legislation	733

ix

	Legal Forms and Characteristics	740
	Judicial Review	745
	Publication	759
	Preliminary Consultation	763
	Parliamentary Supervision	764
23	STATUTORY TRIBUNALS	770
	The Tribunal System: an Introduction	770
	The 2007 Reforms	776
	Procedure of Tribunals	783
	Appeals on Questions of Law and Discretion	793
24	STATUTORY AND OTHER INQUIRIES	801
	The System of Inquiries	801
	The Statutory Inquiry Proper	802
	Complaints and Reforms	806
	Law and Practice Today in Statutory Inquiries	809
	Other Inquiry Procedures	824
	APPENDIX 1	
	Lord Diplock's Formal Statement on Judicial Review	831
	APPENDIX 2	
	Catalogue of European Human Rights	834
	APPENDIX 3	ŝ
	List of Declarations of Incompatibility	840
	APPENDIX 4	
	Table of Chambers	848
	Table of Transferred Functions and Allocations of Functions to Chambers and Procedural Regulations	848
	APPENDIX 5	
	Henry William Rawson Wade 1918–2004	853
	APPENDIX 6	
	Matters that arose or came to light while this book was in the press	871

Index

Х

875