

# Contents

<i>Preface</i>	<i>page</i> xiii
<i>List of Abbreviations</i>	xv
<i>Table of Cases by Date</i>	xvii
<i>Table of Cases by Name</i>	xxxviii
<b>1 Introduction</b>	<b>1</b>
1.1 French Administrative Law in British Scholarship	1
1.2 What Is ' <i>Droit administratif</i> '?	4
1.3 The Shaping of <i>Droit administratif</i>	5
1.4 The Influence of French Constitutional Law	7
1.5 The Influence of EU Law: French Administrative Law and the Supremacy of EU Law	10
1.6 The Influence of the European Convention on Human Rights	14
1.7 Reform of the Administration	21
1.8 A Note about Case Citation	24
<b>2 The Institutional and Legal Context of Administrative Law</b>	<b>26</b>
2.1 The Central Organs of the State	26
2.1.1 The Executive	27
2.1.2 The Legislature	28
2.2 The Local Organs of the State	30
2.2.1 Regional Administration	30
2.2.2 Département	32
2.2.3 The Commune	32
2.2.4 The Big Cities: Paris, Lyon, Marseille (PLM)	33

2.2.5	The Prefect	33
2.3	Elected Local Authorities	34
2.3.1	Region	35
2.3.2	Département	36
2.3.3	The Commune	36
2.3.4	The Big Cities: Paris, Lyon, Marseille	37
2.4	Independent Administrative Authorities (AAIs)	38
2.4.1	Regulation	39
2.4.2	Decision	40
2.4.3	Independence	40
2.5	Défenseur(e) des droits	41
2.6	Sources of Administrative Law	43
2.6.1	The Constitution	44
2.6.2	Codes and Legislation	46
2.6.3	EU Law	47
2.6.4	European Convention on Human Rights	51
2.6.5	General Principles of Law	53
2.6.6	Case Law ( <i>La jurisprudence</i> )	55
2.6.7	Legal Scholarship ( <i>La doctrine</i> )	57
2.7	Conclusion	59
3	Courts and Judges	61
3.1	Historical Context	61
3.2	Administrative Courts	65
3.3	General Courts	65
3.3.1	Tribunaux administratifs	66
3.3.2	Cours administratives d'appel	68
3.3.3	Conseil d'Etat	69
3.3.3.1	The Judicial Role	70
3.3.3.2	The Consultative Role	72
3.3.3.3	Section du rapport et des études	76
3.3.4	Cour nationale du droit d'asile	78
3.3.5	<i>Cour des comptes</i> and Other Financial Courts	80
3.3.6	Other Administrative Courts	82
3.4	Administrative Judges	83
3.4.1	Corps of Judges of the <i>Tribunaux administratifs</i> and the <i>Cours administratives d'appel</i>	84
3.4.2	Corps of the Conseil d'Etat	85
3.4.3	Corps of Financial Judges	88
3.5	Conclusion	88

4	The Procedure for Making Claims against Public Authorities	90
4.1	Principles of the Administrative Court Process	90
4.1.1	The Right to Effective Redress ( <i>Le droit au recours</i> )	91
4.1.2	The Principle of Contradiction ( <i>Le principe du contradictoire</i> )	91
4.1.3	The Principle of Openness ( <i>Le principe de la publicité</i> )	94
4.1.4	The Principle of a Decision within a Reasonable Time ( <i>La durée raisonnable de la procédure</i> )	95
4.1.5	The Principle of the Written Nature of Proceedings ( <i>Le caractère principalement écrite de la procédure</i> )	95
4.1.6	The Principle of the Inquisitorial Character of Proceedings ( <i>Le caractère inquisitoire de la procédure</i> )	96
4.1.7	The Principle of Collegiality ( <i>Le principe de la collégialité</i> )	97
4.2	How Is a Claim Made?	98
4.2.1	Prior Administrative Redress	99
4.2.2	Alternative Dispute Resolution	100
4.2.3	Obligatory Legal Representation	103
4.3	Interim Measures ( <i>Le référé</i> )	104
4.4	The Investigation ( <i>L'instruction</i> )	110
4.4.1	Request for Information	111
4.4.2	Expert Report ( <i>L'expertise</i> )	112
4.4.3	Site Visit ( <i>La visite des lieux</i> )	113
4.4.4	Witness Hearing ( <i>L'enquête</i> )	114
4.4.5	Amicus Curiae	114
4.5	Rapporteur Public	115
4.6	Preliminary References	118
4.7	The Hearing	120
4.8	The Deliberation	122
4.9	Enforcement	123
4.10	Conclusion	127
5	The Distinction between Public Law and Private Law	128
5.1	The Subject Matter of Litigation at the Constitutional Level	130
5.1.1	Illegality	130
5.1.2	Exceptions to the Separation of Administrative and Ordinary Judicial Authorities	131

5.1.2.1	The Defence of Illegality before the Civil Courts	131
5.1.2.2	Criminal Proceedings	133
5.1.2.3	Protection of Civil Liberties and Private Property	134
5.1.2.4	The Good Administration of Justice	137
5.1.2.5	Legislative Exceptions	138
5.2	Other Categories of Litigation	138
5.2.1	Contracts and Commercial Activities	139
5.2.2	Property	139
5.2.3	Liability of Public Bodies	140
5.3	Voie de fait	141
5.4	Public Persons	144
5.5	General Criteria for Identifying Public Law Matters	147
5.6	Mechanisms for Handling Conflicts over Jurisdiction	150
5.6.1	Positive Conflict	150
5.6.2	Negative Conflict	151
5.6.3	Preliminary Reference by a Court	151
5.6.4	Conflict of Decisions	152
5.7	Conclusion	152
6	<b>Judicial Review of Administrative Action: Procedure</b>	<b>154</b>
6.1	Who Can Challenge an Administrative Decision?	155
6.2	What Kinds of Decisions Can Be Challenged?	158
6.2.1	The Need for a Prior Decision	158
6.2.2	Circulars and Soft Law	159
6.2.2.1	Circulars	159
6.2.2.2	Guidelines	160
6.2.2.3	Other Soft Law and Information	161
6.2.3	Internal Measures	162
6.2.4	Actes de gouvernement	164
6.3	Is Judicial Review Inappropriate?	166
6.4	Time Limits	167
6.5	Can Judicial Review Be Excluded?	168
6.6	Remedies	169
6.6.1	Nullity	169
6.6.1.1	What Is the Effect of Nullity?	169
6.6.2	Can Nullity Be Avoided?	170
6.6.3	Injunctions ( <i>Injonctions</i> )	172

6.6.4	Declaratory Judgments	173
6.6.5	Correcting a Decision	174
6.7	Costs	174
6.8	Penalties	175
6.9	Conclusion	176
7	<b>Maintaining Legality: The Grounds of Review</b>	178
7.1	Grounds of Review	179
7.1.1	Non-existence ( <i>Inexistence</i> )	179
7.1.2	Lack of Competence ( <i>Incompétence</i> )	181
7.1.3	Breach of an Essential Procedural Requirement ( <i>Vice de procédure et vice de forme</i> )	182
7.1.4	Abuse of Power ( <i>Détournement de pouvoir</i> )	185
7.1.5	Illegality	188
7.1.5.1	Error of Fact	188
7.1.5.2	Error of Law ( <i>Erreur de droit</i> )	190
7.1.5.3	Manifest Error in Evaluation ( <i>Erreur manifeste d'appréciation</i> )	191
7.1.5.4	Proportionality	195
7.1.5.5	The Sliding Scale for Review	199
7.2	Values Enforced through Judicial Review	203
7.3	Fundamental Rights	203
7.3.1	Constitutional Rights	204
7.3.2	European Convention on Human Rights	208
7.3.3	General Principles of Law	210
7.3.4	Modern Emerging Principles	219
7.4	Principles of Good Administration	221
7.4.1	The Conduct of Public Officials	222
7.4.2	Transparency and Data Protection	224
7.4.3	The Handling of Requests from the Public	225
7.4.4	Time Limits and Appeals	227
7.4.5	Principles Governing the Decision Taken	228
7.4.6	Legitimate Expectations and Legal Certainty	228
7.4.7	Duty to Give Reasons	230
7.5	Conclusion	231
8	<b>State Liability</b>	233
8.1	Introduction	233
8.2	Theories of Liability	234

8.3	Liability for Public Works ( <i>Responsabilité pour les travaux publics</i> )	236
8.4	Fault Liability	238
8.4.1	The Nature of Fault	239
8.4.2	Faute de service	240
8.4.3	Faute personnelle	242
8.4.4	<i>Faute simple</i> and <i>Faute lourde</i>	245
8.4.5	Fault and Unlawfulness	248
8.4.6	Fault in Regulation	250
8.4.7	Types of Fault	251
8.5	No-Fault Liability	252
8.5.1	Liability for Exceptional Risks	252
8.5.2	Assistance to the Public Service	256
8.5.3	Equality before Public Burdens	257
8.5.4	Other No-Fault Compensation	261
8.6	Controls on Liability	263
8.6.1	Categories of Harm	263
8.6.2	Causation	264
8.6.3	Measure of Damages	266
8.7	Conclusion	268
9	Claims Relating to Public Contracts	270
9.1	What is a Public Law Contract?	270
9.1.1	Criteria Laid Down by Administrative Courts	272
9.1.1.1	Criteria Linked to a Public Service Mission	272
9.1.1.2	Criteria Based on a Clause Unusual in Private Law	273
9.1.2	Criteria Laid Down by the Legislator	275
9.2	Specific Rules Applicable to Public Law Contracts	278
9.2.1	Rules Applicable to the Formation of the Contract	278
9.2.1.1	Validity of the Contractual Consent	279
9.2.1.2	Validity of the Contractual Content	281
9.2.2	Rules Applicable to the Performance of the Contract	283
9.2.2.1	Exceptions to the Binding Force of Contracts Benefiting Public Authorities	284
9.2.2.2	Exceptions to the Binding Force of Contracts Benefiting Private Contractors	287
9.3	Remedies for Public Law Contracts	289
9.3.1	Remedies for Third Parties to Public Law Contracts	290

9.3.2	Remedies for Parties to Public Law Contracts	291
9.4	Concluding Remarks	293
10	Conclusion	299
10.1	Path Dependence	299
10.2	The Constitutional Turn	301
10.3	The European Environment	303
10.4	Social Change	305
10.5	Renvoi	306
	<i>Index</i>	307