

Contents

Table of Statutes	xvii
Table of Statutory Instruments	xxix
Table of Cases	xxxi
Table of European Conventions, Directives and Treaties	lix
Online Resource Centre	lxii
Guide to using the book	lxiii

Part One **Fundamental Principles of the Constitution**

1 The Meaning of a Constitution	3
What is a constitution?	3
Classifying constitutions	7
Do written constitutions have any value?	9
The unwritten nature of the UK constitution	10
Does the UK have a constitution?	12
Sources of the UK constitution	13
The changing nature of the UK constitution	13
Should the UK have a written constitution?	14
FURTHER READING	15
SELF-TEST QUESTIONS	16
2 Separation of Powers	18
Introduction	18
Montesquieu and <i>L'Esprit des Lois</i>	19
Is there a separation of powers in the UK constitution?	21
FURTHER READING	33
SELF-TEST QUESTIONS	34

3 Rule of Law	36
Meaning of the rule of law	36
Laws should be prospective	39
Laws should be open and clear	40
Natural justice	41
Access to the courts	41
Dicey and the rule of law	43
Equality before the law	45
The principle of legality	47
The rule of law and the criminal law	48
The contemporary significance of the rule of law	48
FURTHER READING	52
SELF-TEST QUESTIONS	53
4 The Royal Prerogative	55
Introduction	55
Some examples of prerogative power	57
Prerogative and statute	61
Adapting prerogative powers	64
The prerogative and the courts	64
Reform	70
FURTHER READING	74
SELF-TEST QUESTIONS	75
5 The Legislative Supremacy of Parliament	76
Sovereignty of Parliament	76
The traditional view	77
The doctrine of implied repeal	83
Entrenchment	84
The new view or the manner and form argument	85
The Parliament Acts 1911 and 1949	87
The Union legislation	91

Legislative supremacy and the EC	92
Legislative supremacy and devolution	95
Legislative supremacy and the Human Rights Act	96
FURTHER READING	112
SELF-TEST QUESTIONS	113

Part Two **The Institutional Framework of the Constitution**

6 Parliament	117
House of Commons	117
Composition of the House of Commons	122
Officers of the House of Commons	126
The life of Parliament	127
House of Commons sittings	128
The committee system	130
House of Lords	135
Reform of the House of Lords	137
Parliamentary privilege	141
FURTHER READING	146
SELF-TEST QUESTIONS	147
7 The European Community and the European Union	148
The European Communities	148
The European Union	150
The institutions of the Community	151
The Council of Ministers	152
The Commission	155
The Parliament	158
The Court of Justice and the Court of First Instance	161
FURTHER READING	165
SELF-TEST QUESTIONS	166

8 The Structure of the United Kingdom and Devolution	167
The structure of the United Kingdom	167
Devolution	171
Welsh devolution	172
National Assembly for Wales	173
Welsh Assembly Government	174
Law-making powers	175
Committees	177
Developing devolution in Wales	178
Scottish devolution	179
The Scottish Parliament	179
The Executive	180
Legislative powers	181
Acts of Union	182
Northern Ireland Assembly	183
The Belfast Agreement	183
Legislative power	183
The Northern Ireland Executive	185
The English Question	186
The impact of devolution	187
Memorandum of Understanding	188
FURTHER READING	191
SELF-TEST QUESTIONS	192

Part Three **Sources of Public Law**

9 Primary and Secondary Legislation	195
Public General Bills	195
The parliamentary stages	198
House of Lords stages	200
Private Bills	202
Hybrid Bills	204
Private Members' Bills	204

Consolidation Bills	207
Delegated legislation	208
General types of delegated legislation	210
Specific types of delegated legislation	211
Statutory instruments	213
Quasi-legislation	216
FURTHER READING	216
SELF-TEST QUESTIONS	217
10 EC Law	218
The treaties	218
Legislative acts	219
Direct applicability	221
Direct effect	221
Community law and the English courts	234
FURTHER READING	238
SELF-TEST QUESTIONS	239
11 Constitutional Conventions and Judge-Made Law	241
Constitutional conventions	241
The nature of constitutional conventions	242
Examples of constitutional conventions	243
Enforcing conventions	248
Establishing the existence of a convention	248
The courts and conventions	249
Can conventions be made into laws?	250
Codification	251
Conventions and devolution	252
Judge-made law	253
The common law	253
Interpreting Acts of Parliament	255
FURTHER READING	259
SELF-TEST QUESTIONS	260

Part Four Judicial Review of Administrative Action

12 The Nature of Judicial Review	263
The jurisdiction	263
Procedural reform	267
The rule in <i>O'Reilly v Mackman</i>	268
The public law/private law distinction	273
Collateral challenge	276
Exclusion of judicial review	280
The procedure for judicial review	284
FURTHER READING	293
SELF-TEST QUESTIONS	294
13 The Grounds for Judicial Review	295
Introduction	295
Illegality	297
Relevant/irrelevant considerations	297
Fiduciary duty	300
Fettering of a discretion	301
Improper purpose	303
Bad faith	305
Irrationality	306
Proportionality	309
Procedural impropriety	314
Natural justice	316
Legitimate expectations	319
The right to a fair hearing	322
Reasons	324
The rule against bias	327
FURTHER READING	334
SELF-TEST QUESTIONS	334

14 Judicial Review Remedies	336
Introduction	336
Damages	337
Prescriptive or permissive?	337
A quashing order	338
A prohibiting order	339
A mandatory order	340
Declaration	341
Injunctions	342
Interim declaration	343
Substitutionary remedy	343
Other public law remedies	344
FURTHER READING	345
SELF-TEST QUESTIONS	345

Part Five Alternative Means of Redress

15 Tribunals, Inquiries, and the Ombudsmen Remedy	349
The distinction between tribunals and inquiries	349
Tribunals	350
The statutory framework	354
Composition and procedure	354
The Council on Tribunals	355
Reforming the tribunal system	356
Inquiries	360
The origins of ombudsmen	362
The Parliamentary Commissioner	363
Ombudsmen of the devolved institutions	374
The Health Service Commissioner	375
The Local Government Commissioners	378
Ombudsmen and the courts	381
Reform	382
European Ombudsman	384

FURTHER READING	387
SELF-TEST QUESTIONS	388

Part Six Civil Liberties

16 Freedoms and Liberties in the UK	393
Human rights and civil liberties distinguished	393
Political and social or economic rights	395
The traditional means of protecting civil liberties in the UK	396
European Convention on Human Rights	397
Incorporation of the Convention into English law: the judges' view	413
Judicial deference/discretionary area of judgment	428
A Bill of Rights?	433
FURTHER READING	434
SELF-TEST QUESTIONS	435
17 Freedom of Expression	437
Control of obscenity and indecency	437
Publication of obscene matter	438
Test of obscenity	439
Defences	443
Powers of search and seizure	445
A new criminal offence?	446
Further statutory provision for obscenity and indecency	446
The common law	449
Contempt of court	451
FURTHER READING	463
SELF-TEST QUESTIONS	464

18 Police Powers	465
Police discretion	465
The Police and Criminal Evidence Act 1984 (PACE)	467
Codes of Practice	467
Police powers of stop and search	468
Arrest	473
Powers to enter property	482
Assault on or wilful obstruction of a police officer	492
FURTHER READING	496
SELF-TEST QUESTIONS	497
19 Freedom of Assembly and Public Order	498
Rights and freedoms	498
Breach of the peace	499
Public Order Act 1986	510
Racially or religiously aggravated public order offences	519
Processions and assemblies	522
Demonstrations in the vicinity of Parliament	530
FURTHER READING	532
SELF-TEST QUESTIONS	533
Index	535