

TABLE OF CONTENTS

	PAGE
<i>Preface</i>	vii
<i>Table of Cases</i>	xxix
<i>Table of Statutes</i>	cxv
<i>Table of Statutory Instruments</i>	cxxiii
<i>Table of Civil Procedure Rules</i>	cxxv
<i>Table of International and European Treaties and Conventions</i>	cxxxi
<i>Table of European Secondary Legislation</i>	cxxxi

	PARA
1. Introduction	
A. Public law.....	1-001
B. The claim for judicial review.....	1-004
C. Significance of the claim for judicial review	1-007
D. Habeas corpus	1-011
E. Statutory mechanisms of challenge	1-012
F. Damages and restitution.....	1-013
G. European Convention on Human Rights.....	1-016
H. EU law.....	1-017
2. The Availability of Judicial Review	
A. Introduction	2-001
B. Source of the power	
Statute	2-005
Non-statutory bodies exercising statutory powers.....	2-007
Situations where judicial review is inappropriate	2-009
Rationale for judicial review of statutory powers and duties	2-010
Statutory bodies performing a non-public function.....	2-011
Statutory bodies and private law	2-014
Prerogative	
Availability of judicial review	2-018
Definition of the prerogative.....	2-019
Scope of judicial review	2-023
Prerogative powers that are reviewable.....	2-026
Prerogative powers to regulate the civil service	2-027
Powers relating to the defence of the realm.....	2-029
Prerogative powers in foreign affairs	2-030

CONTENTS

Powers to legislate for overseas territories and Crown	
Dependencies	2-034
The prerogative power to grant a pardon	2-039
Prerogative power to consent to relator action	2-043
Prerogative power to stop criminal proceedings	2-045
Miscellaneous prerogative powers	2-046
Common law powers of the Crown	2-047
European Convention on Human Rights	2-053
European Union Law	2-056
Sporting bodies and other bodies deriving jurisdiction from contract	
Domestic tribunals	2-061
Judicial control of domestic tribunals	2-070
Criticism of the existing position	2-072
Public bodies acquiring jurisdiction by contract	2-073
C. Nature of the function	
Bodies performing public functions	2-078
Government or public authority involvement	2-081
Statutory recognition	2-090
Private bodies discharging functions on behalf of public bodies	2-094
The nature and importance of the function	2-100
The absence of private law mechanisms of control	2-103
Common law powers of certain bodies	2-104
D. Miscellaneous bodies	
Chartered corporations	2-107
The British Broadcasting Corporation	2-112
Universities and colleges	2-116
The Inns of Court	2-119
Parliament	2-120
Charities	2-121
Superior courts	2-122
Inferior courts	2-129
E. Subject-matter of the claim	2-131
Contract	2-135
Statutory restrictions on the power to contract	2-137
Power to contract	2-139
Public law principles regulating the exercise of contractual power	2-149
Contractual position of the Crown	2-153
Judicial review and employment relationships	2-156
Tort	2-161
Statutory duties	2-163
No, or no live, issue of public law raised	2-167
Family law	2-170
F. Declarations and injunctions	2-174
G. Damages, restitutionary claims and judicial review	2-180
H. Power to transfer	2-181

CONTENTS

3. Choice of Forum and the Exclusivity of Judicial Review

Proceedings in Public Law

A. Introduction	3-001
B. The rule in <i>O'Reilly v Mackman</i>	3-003
Rationale for the rule	3-005
Effect of the rule	3-009
Scope of the rule	3-012
Cases raising only public law issues	3-018
Cases involving only private law issues	3-020
Cases involving both private and public law	
Decisions affecting private law rights	3-021
Public and private law claims arising	3-030
Public law decision a precondition to creation of a private law right	3-038
Cases involving enforcement of a private law right where a collateral issue of public law arises	3-044
Consent	3-045
C. Defences	
Defences in civil proceedings	3-046
Defences based on the invalidity of the decision to institute proceedings	3-051
Defence to criminal proceedings	3-054
Decisions to institute criminal charges	3-059
Consequences of a successful defence in criminal cases	3-060
D. Relator actions	3-063
E. Habeas corpus	3-064
F. Declarations against the Crown	3-065
G. Specific provision for ordinary claims	3-066
H. Appeal procedures and original jurisdiction of tribunals	3-067
I. Assessment of the rule in <i>O'Reilly v Mackman</i>	3-069

4. Judicially Reviewable Acts and Omissions

A. Introduction	4-001
B. Acts affecting individuals	
Decisions and determinations	4-005
Decisions affecting rights	4-006
Decisions affecting Convention Rights	4-008
Decisions imposing legal sanctions	4-009
Decisions affecting personal liberty	4-011
Decisions affecting livelihood and office	4-012
Decisions affecting legitimate expectations	4-013
Exercises of discretionary power	4-014
Decisions having factual consequences for individuals	4-016
Procedural decisions	4-017
Preliminary decisions	4-020
Decisions on whether or not to institute proceedings	4-021
Recommendations	4-027
Managerial decisions	4-029

CONTENTS

Reports	4-031
Advice and guidance	4-036
Conduct or action other than decisions affecting an individual	4-046
C. Acts by one public body affecting another public body	4-051
Central-local government relations	
Decisions	4-053
Default powers	4-054
Fiscal controls	4-055
Determining the allocation of authority	4-056
Protection of procedural rights	4-057
Challenges by central government	4-058
Relations between local authorities	4-059
Relations between other public bodies	4-061
D. Measures of general application	4-062
Acts of Parliament	4-063
Acts of Parliament and EU law	4-065
Proposed legislation and EU law	4-067
Acts of the National Assembly for Wales	4-069
Delegated legislation	4-070
Policies	4-073
Other measures of general application	4-075
E. Failure to act	
Failure to perform a public law duty	4-076
Failure to exercise jurisdiction or discretion	4-080
NON-JUSTICIABLE ACTS AND OMISSIONS	
Meaning of justiciability	4-083
Security issues	4-085
Foreign affairs and defence	4-086
Matters of academic judgment	4-088
Resource allocation in the health field	4-089
Other issues involving questions of judgment	4-090
Qualifications on the concept of justiciability	4-092
5. Invalidity, Partial Invalidity and Severance	
A. Introduction	5-001
B. The ultra vires principle	5-002
Basis of the ultra vires principle	5-003
Exception to the ultra vires principle – errors of law within jurisdiction	5-004
C. The meaning of null and void in administrative law	
Introduction	5-006
Need to establish invalidity	5-009
Methods of establishing invalidity	5-011
Situations where the courts will refuse to intervene	5-012
Consequences when the courts do intervene	5-016
Consequences in contract and restitution	5-017
Consequences in tort	5-020

CONTENTS

Void and voidable	5-026
D. Prospective declarations	5-028
E. Partial invalidity and severance	
Measures only partially invalid	5-035
The test for severance or partial invalidity	5-037
Textual severability	5-040
Substantial severability	5-042
Measures other than delegated legislation	5-045
6. The Prerogative Remedies: Quashing Orders, Prohibiting Orders and Mandatory Orders	
A. Introduction	6-001
B. Quashing orders	
The control of ultra vires acts	6-002
The scope of quashing orders	6-003
Non-binding acts	6-006
Quashing orders and nullities	6-007
Quashing orders and subordinate legislation	6-008
Refusals or failure to act	6-010
Threatened unlawful acts	6-011
Restrictions on the availability of quashing orders	6-012
The effect of a quashing order	6-016
Power to remit or substitute a decision	6-019
Variation of sentences	6-023
Severance or partial invalidity	6-024
Standing and discretion	6-025
Stay of proceedings	6-026
Principles governing the grant of a stay	6-031
Consequences of breach of a stay	6-032
Errors of law on the face of the record	6-033
Definition of the record	6-034
Definition of error of law	6-035
Effect of a quashing order in relation to intra vires of law on the fact of the record	6-036
C. Prohibiting orders	
Purpose of a prohibiting order	6-037
Prevention of unlawful action	6-038
Conditional prohibiting orders	6-041
Restrictions on prohibiting orders	6-042
Premature applications for prohibiting orders	6-044
Interim relief, standing and the discretionary refusal of prohibiting orders	6-045
Failure to comply with a prohibiting order	6-046
D. Mandatory orders	6-047
Duty to exercise jurisdiction or discretion	6-048
Duty to perform a specific act	6-051
Duties derived from EU Law	6-056

Duties derived from the European Convention on Human Rights.....	6-057
Duties to provide services.....	6-058
Duty to comply with orders or directions.....	6-061
Restrictions on the availability of mandatory orders	
Superior court.....	6-062
The Crown.....	6-063
Matters of military law.....	6-066
Technical restrictions.....	6-067
Effect of a mandatory order.....	6-069
Interim relief.....	6-070
Standing and discretion to refuse a remedy.....	6-071

7. Declarations

A. Introduction.....	7-001
B. Historical outline.....	7-002
Pre-1978 position.....	7-005
Position from 1978 onwards.....	7-007
C. Uses of the declaration in public law.....	7-009
To establish whether a decision, order, conduct or other act is ultra vires.....	7-012
To establish the invalidity of subordinate legislation.....	7-014
To specify the consequences of a finding of invalidity.....	7-016
To determine the extent of the powers of a public body.....	7-017
To determine the existence and extent of public duties.....	7-020
To determine rights.....	7-022
To determine questions arising out of legitimate expectations.....	7-027
To determine questions of law.....	7-029
To determine questions of EU law.....	7-032
To determine questions concerning Convention Rights.....	7-037
Declarations of incompatibility under the Human Rights Act 1998.....	7-038
D. Restrictions on the grant of declaratory relief	
Non-legal claims.....	7-040
Matters outside the jurisdiction of municipal courts.....	7-041
Validity of Acts of Parliament.....	7-042
Internal proceedings of Parliament.....	7-046
Intra vires errors of law.....	7-047
Hypothetical and academic disputes.....	7-048
Other grounds for refusing a declaration.....	7-053
E. Declarations and the criminal law.....	7-054
F. Declarations against the crown.....	7-063
G. Standing.....	7-066
H. Discretion.....	7-068
I. Severance or partial invalidity.....	7-069
J. Interim relief.....	7-070
K. Effect of granting declaratory relief.....	7-074

L. Prospective declarations.....	7-075
M. Declaratory relief outside CPR Part 54.....	7-083
N. Relator actions.....	7-084

8. Injunctions

A. Introduction.....	8-001
Position prior to 1978.....	8-003
The position at the present time.....	8-005
B. Uses of the injunction in public law	
Restraining public bodies from acting unlawfully.....	8-006
Restraining implementation of unlawful decisions.....	8-007
Enforcing public duties.....	8-008
Injunctions in the nature of quo warranto.....	8-011
C. Injunctions against the crown.....	8-012
D. Injunctions and legislation.....	8-015
EU law and legislation.....	8-018
Injunctions and subordinate legislation.....	8-021
Injunctions and Parliament.....	8-023
E. Interim relief.....	8-024
Serious issue to be determined.....	8-027
Balance of convenience: relevance of damages.....	8-030
Balance of convenience: the wider public interest.....	8-032
Cases affecting third parties.....	8-035
Cases involving EU law.....	8-036
Procedure for applying for interim relief in judicial review claims.....	8-039
F. Injunctions outside the judicial review procedure	
Injunctions in aid of the criminal law.....	8-041
Criteria for determining whether to grant an injunction.....	8-042
Conduct of the defendant.....	8-044
Adequacy of the criminal penalties.....	8-045
Other considerations.....	8-046
Interlocutory injunctions.....	8-048
Defences to the action.....	8-050
Defences under EU law.....	8-052
Procedure.....	8-054
Injunctions in public law cases.....	8-057
Injunctions to enforce a public right.....	8-058
Local authorities.....	8-059
Statutory provision for injunctions.....	8-060
Injunctions and chartered bodies.....	8-063

9. Machinery of Judicial Review

A. Introduction.....	9-001
B. The pre-action protocol.....	9-004
C. Applications for permission	
Procedure for applying for permission.....	9-005
Form N461.....	9-007

CONTENTS

Need to specify the measure challenged and the remedies sought	9-008
Need to specify grounds and facts in respect of which a remedy is claimed	9-009
Written evidence in support of claim	9-013
Procedure in urgent cases and cases involving interim relief	9-014
Applications to be made in London, Cardiff or one of the regional centres	9-015
Time-limits for bringing the claim and delay	9-016
Time limits and EU law	9-018
Specific time-limits for procurement and planning claims	9-020
Date from which time begins to run in cases of decisions and other acts	9-021
Staged decision-making processes	9-022
Alternative administrative remedies	9-027
Subordinate legislation	9-029
Primary legislation and EU law	9-031
Primary legislation and declarations of incompatibility	9-032
Date from which time runs in cases of failure to act	9-033
Extension of time for bringing claims for judicial review	9-034
Public importance	9-040
Parties cannot extend time by agreement	9-041
Effect of a grant of an extension of time	9-042
Effect of a finding that a claim was brought promptly	9-043
Applications for protective costs orders	9-044
Proposed legislative changes	9-049
Protective costs orders and environmental challenges falling within the Aarhus Convention	9-050
Service of the claim form on the defendant and interested parties	9-052
Acknowledgment of service	9-053
Consideration of the initial application for permission	9-054
Test for granting permission	9-057
Arguable case	9-058
Cases totally without merit	9-059
Procedure	9-060
Delay	9-061
Alternative remedies	9-062
Discretion to refuse a remedy	9-063
Standing	9-064
Permission limited to certain grounds or decisions only	9-065
Directions, venue and ancillary orders	9-068
Notification	9-070
Renewal of application if permission is refused	9-071
Appeals against refusal of permission: the distinction between criminal and non-criminal or civil matters	9-073
Appeals against refusals of permission in civil cases	9-077

CONTENTS

Refusal of permission in a criminal cause or matter	9-079
Challenging the grant of permission	
Application to set aside the grant of permission	9-080
Appeal	9-081
Striking out	9-082
Challenging a decision to set aside permission	9-083
Costs at the permission stage	
Costs where permission is granted	9-084
Costs where permission refused on the papers	9-086
Costs where permission refused at an oral hearing	9-089
Wasted costs	9-090
Costs where proceedings are discontinued or settled	9-091
D. The claim for judicial review	9-095
Defendant and interested parties' detailed grounds and written evidence	9-096
Duty of candour	9-097
Written evidence and reasons	9-100
Duty on claimant to reconsider claim	9-102
Further written evidence	9-103
Amendments	
Additional grounds	9-104
Additional remedies or challenges to new decisions	9-107
Interlocutory applications	9-108
Disclosure	9-109
Circumstances when disclosure may be ordered	9-110
Public interest immunity and legal professional privilege	9-116
Closed material procedures	9-118
Further information	9-119
Cross-examination	9-120
Interim relief and stays	9-122
Protective costs orders	9-123
Orders disposing of proceedings	9-125
Listing of cases	9-127
Bundles of documents	9-128
Skeleton arguments	9-129
E. The hearing	
Parties	9-130
Forum	9-132
Burden of proof	9-133
Fresh evidence	9-134
Remedies	9-136
Damages, restitution and recovery of money	9-138
Conversion to a Part 7 claim	9-139
Costs	
The general rule	9-140
Two or more parties opposing the claim	9-142
Intervener's costs	9-143

Appeals to the Court of Appeal in non-criminal matters	9-144
Applications for permission to appeal	9-146
Processing the appeal	9-149
The appeal.....	9-150
Appeals in criminal cases.....	9-152

10. Judicial Review and the Upper Tribunal

A. Introduction	
Judicial review by the Upper Tribunal.....	10-001
Judicial review of the Upper Tribunal	10-004
B. Judicial review in the Upper Tribunal	
The Upper Tribunal	10-005
Allocation of judicial review within the Upper Tribunal	10-008
The powers and remedies of the Upper Tribunal	10-013
Circumstances in which judicial review claims must be determined by the Upper Tribunal.....	10-018
Relevant judicial review directions	10-021
Circumstances in which judicial review claims may be determined by the Upper Tribunal.....	10-026
Effect of transfer of cases as between the High Court and the Upper Tribunal	10-028
Grounds for seeking judicial review	10-030
Judicial review procedure in the Upper Tribunal	10-031
Pre-action protocol	10-032
Application for permission.....	10-033
Time limits	10-034
Form of application.....	10-036
Acknowledgement of service.....	10-040
The permission decision	
Standing.....	10-042
Test	10-043
Procedure on permission decisions.....	10-045
Renewal hearing.....	10-046
Procedure following the grant of permission.....	10-048
The response.....	10-049
The hearing.....	10-050
Remedies	10-056
Costs	10-057
Appeals	10-060
C. Judicial review of the Upper Tribunal	
The decision in <i>Cart</i> and amenability to judicial review	10-064
The procedure for judicially reviewing the Upper Tribunal	10-066
The permission test.....	10-070
Appeals	10-072

11. Standing

A. Introduction	11-001
B. A uniform test of sufficient interest.....	11-005
Test for standing at the permission stage.....	11-007
Test at the hearing – meaning of sufficient interest.....	11-008
Scope of the statutory power or duty	11-010
Nature of the claimant's interest	11-013
Procedural entitlement as an indication of sufficient interest	11-017
Public interest in challenge	11-018
Representative bodies	11-020
Public interest groups	11-024
Standing under the Human Rights Act 1998	11-027
Challenges to local authority decisions.....	11-028
Challenges by public bodies.....	11-032
Challenges by local authorities	11-033
Nature of the breach	11-036
C. Effect of a finding of no sufficient interest	11-038
D. Capacity	11-039
E. Standing outside CPR, Part 54.....	11-040

12. The Discretion of the Court to Refuse a Remedy and the Exclusion of Judicial Review

A. Introduction	12-001
B. Conduct of the claimant.....	12-005
Delay.....	12-009
Prematurity	12-013
C. Remedy of no practical use.....	12-019
No injustice or prejudice suffered	12-022
Decision would be the same irrespective of the error	12-026
D. Impact on third parties.....	12-033
E. Impact on administration.....	12-035
F. Nature of decision.....	12-040
Nature of the error committed.....	12-041
G. Alternative remedies	
Existence of alternative remedies.....	12-042
Exhaustion of alternative remedies	12-043
Rationale for the principle.....	12-045
Scope of the principle.....	12-046
Type of error.....	12-047
Distinction between appeal and review.....	12-052
Situations in which alternative remedy inadequate.....	12-053
Appellate machinery inadequate to resolve dispute	12-057
Urgency and speed.....	12-059
Need for an interim remedy.....	12-061
Costs	12-062
Need for authoritative judicial guidance	12-064
Relevance of an ultimate right of appeal to a court.....	12-066

CONTENTS

Preliminary decisions	12-069
Other exceptional circumstances	12-071
No appeal available	12-072
Decisions of inferior courts and tribunals where permission required to appeal	12-074
Stage at which existence of alternative remedies should be considered	12-076
H. Implied exclusion of judicial review	
General position	12-077
Duties and default powers	12-078
Early exceptions to Pasmore	12-079
Current approach to alternative remedies and statutory duties	12-080
Enforcement of a statutory right	12-082
I. Statutory exclusion and restriction of judicial review	
Introduction	12-086
Final and conclusive and similar clauses	12-089
Shall not be questioned and similar clauses	12-092
Designation of a court or tribunal as a superior court of record	12-095
No certiorari and similar clauses	12-096
Conclusive evidence and similar clauses	12-097
Partial ouster clauses	12-102
"As if" enacted clauses	12-105
Statutory reform of ouster clauses	12-106
Scope of section 12	
Measures within section 12	12-108
Types of ouster clauses within section 12	12-110
Acts within section 12	12-115
Remedies restored by section 12	12-116
Statutory applications to quash and time-limited ouster clauses	12-117
Possible exceptions	12-120
Significance of the Tribunals and Inquiries Act 1992	12-121
Ouster clauses and EU law	12-122
Ouster clauses and the European Convention on Human Rights	12-123
13. Habeas Corpus	
A. Introduction	13-001
B. Scope of the jurisdiction	13-002
Nature of review on habeas corpus application	
Questions of fact	13-004
Questions of legal validity	13-009
Burden and standard of proof	13-014
Discretion to refuse habeas corpus	13-016
Habeas corpus and superior courts of record	13-019
Habeas corpus and criminal appeals	13-020

CONTENTS

Habeas corpus and the Crown	13-021
Committals by Parliament	13-022
Territorial scope of habeas corpus	13-023
C. Procedure	
Application for the writ	13-024
Powers of court on an application without notice	13-026
Procedure at the hearing	13-028
Power of the court at a hearing	13-029
Issue of the writ	13-031
Return of the writ and procedure at the hearing	13-032
Costs	13-033
Appeals	13-034
Other writs of habeas corpus	13-036
14. Appeals and Statutory Applications	
A. Introduction	14-001
B. Appeal by way of case stated	
General	14-003
C. Appeals by case stated from the Crown Court	
Jurisdiction to state a case	14-005
Interlocutory decisions by the Crown Court	14-008
Procedure for stating a case	14-010
Lodging the appeal	14-012
Listing of cases	14-013
Procedure on appeal	14-014
Appeals	14-015
D. Appeals by case stated from a magistrates' court	
Jurisdiction to state a case	14-017
Interlocutory decisions of magistrates' courts	14-019
Procedure for stating a case	14-022
Form of the case	14-026
Lodging the appeal	14-027
Listing of cases	14-028
Procedure on appeal	14-029
Amendment	14-030
Powers of the court	14-031
Costs	14-033
Appeal	14-034
Relationship between appeal by case stated and other remedies	14-036
E. Appeals by case stated by other public bodies to the High Court	
Jurisdiction to hear appeals by case stated	14-040
Application	14-041
Interlocutory decisions	14-042
Procedure for stating a case	14-043
Proceedings for determination of a case	14-045
Amendment	14-046
F. Appeal by case stated to the Court of Appeal	14-047

CONTENTS

G. Appeal to the High Court	
Jurisdiction to hear appeals	14-048
Procedure for appealing	14-053
Amendment	14-056
Listing of cases	14-057
Procedure at the hearing	14-058
Powers of the High Court	14-059
Costs	14-060
Planning appeals	14-061
Appeals from professional disciplinary bodies	14-065
Appeals to the Court of Appeal	14-067
H. Appeal to the Court of Appeal	14-068
I. Statutory applications to quash	
Jurisdiction to hear applications	14-069
Standing	14-072
Time-limits	14-074
Procedure for applying	14-075
Witness statements	14-077
Interim relief	14-078
Amendments	14-079
Hearing of the application	14-080
Powers	14-081
Costs	14-083
Relationship with other remedies	14-085
Miscellaneous	14-086

15. Damages and the Principles Governing Public Authority

Liability

A. Introduction	15-001
B. Tortious liability	
Negligence	
Introduction	15-003
Duty of care	15-006
Purpose for which a statutory power is conferred	15-011
Nature of the function	15-014
Practical consequences of imposing liability	15-023
Relevance of alternative remedies	15-025
Kind of harm	15-027
Omissions and failure to exercise a power	15-030
Liability for acts of third parties	15-033
Relevance of the European Convention on Human Rights	15-036
Negligent misstatement	15-037
Breach, causation and loss	15-041
Non-justiciable decisions, discretion and the operational-policy distinction	15-042
Striking out	15-049
Summary judgment	15-051

CONTENTS

Nuisance	15-052
The rule in Rylands v Fletcher	15-057
Breach of statutory duty	
Introduction	15-060
Relevance of alternative remedies	15-064
Default powers and administrative remedies	15-065
Alternative means of enforcement and the availability of judicial review	15-068
Obligations imposed for a defined class of persons	15-072
Non-feasance and highways	15-077
Conditions of liability	15-078
Trespass	15-080
False imprisonment	15-082
Other torts relevant to the criminal justice system	15-091
Mode of trial	15-092
General considerations governing tortious liability in the criminal justice field	
Liability of the police	15-093
Exemplary damages	15-094
Miscellaneous torts	15-096
Misfeasance in a public office	15-097
Meaning of public office	15-098
Malice or knowledge of unlawfulness	15-100
Causation and damages	15-103
Proximity	15-106
Relationship with other torts	15-107
Immunities	
Judicial immunity	15-108
Specific statutory immunities	15-113
C. Breach of EU law	15-114
D. Damages under the Human Rights Act 1998	15-115
E. Contract	15-116
Whether contract exists	15-117
Contract and public sector employment	15-118
Public law principles and contract	15-119
F. Restitution	15-122
Possible defences and time limits	15-125
Recovery of money paid by a public body	15-127
Procedure	15-128
Statutory provision for recovery and set-off	15-131
Charges levied contrary to EU law	15-133
G. Relevance of remedial discretion of the courts to private law claims	15-135
H. Statutory compensation	15-136
I. Crown proceedings	
Introduction	15-137
Liability in tort	15-138

Immunities	
Judicial functions	15-140
Armed forces	15-141
Personal liability of the Sovereign	15-142
Acts not done in respect of the government of the UK	15-143
Definition of the Crown	15-144
Liability in contract	15-146
Personal liability of the Sovereign	15-150
Procedure	15-151
Disclosure, further information and evidence	15-154
Remedies and execution	15-155

16. Remedies under the Human Rights Act 1998

A. Introduction	16-001
The structure of the Human Rights Act	
Convention rights	16-006
Decisions of the European Court of Human Rights	16-008
Primary and subordinate legislation	16-009
Challenges to administrative action	16-010
Other provisions	16-011
Acts incompatible with Convention rights	16-013
Meaning of public authority	16-015
Core public authorities	16-016
Hybrid public authorities	16-017
D. Primary legislation incompatible with Convention rights	
Section 3	16-020
Section 4	16-021
E. Damages for breach of Convention rights	16-022
Article 2	16-025
Article 3	16-026
Article 5	16-027
Article 6	16-028
Article 8	16-029
Article 12	16-030
Article 14	16-031
Article 1 of the First Protocol	16-032
Article 3 of the First Protocol	16-033
Judicial acts	16-034
Procedure	16-035
F. Machinery under the Human Rights Act 1998	16-036
Standing	16-039
Appropriate court or tribunal	16-041
Judicial acts	16-043
Time limits	16-044

17. Remedies for the Enforcement of European Union Law in

National Courts

A. The significance of the law of the European Union	17-001
B. Direct effect—the position under EU law	
Treaty provisions	17-005
Test for direct effect	17-006
Partial direct effect	17-012
Temporal limitations and prospective direct effect	17-013
Regulations	17-016
Directives	17-018
Definition of emanation of the State	17-021
Test for direct effect	17-026
Decisions	17-027
Agreements between the EU and non-Member States	17-029
C. Supremacy of European law—the position under EU law	17-031
D. Duty of consistent interpretation	17-033
E. The obligation to achieve full and effective protection	17-034
F. State liability in damages for violation of EU law	17-035
G. EU law in the UK	
Direct effect	17-036
Implementation of EU obligations	17-039
Supremacy of EU law before UK courts	17-042
Duty of uniform interpretation	17-048
H. Remedies for breaches of EU law	
Principles laid down by the Court of Justice on remedies	17-052
The need to ensure full and effective protection	17-054
The principles of effectiveness and equivalence	17-055
Meaning of equivalence	17-057
The principle of full and effective protection: specific requirements	
Breach of European Union law: appropriate remedies	17-061
State liability in damages	
The decision in Francovich	17-063
Conditions for State liability	17-066
Substantive and procedural conditions governing State liability in damages	17-072
Restitutionary claims	17-074
Other specific remedies	17-075
Right to a judicial remedy	17-076
Courts having jurisdiction	17-077
Availability of interim relief	17-078
Time-limits	17-079
Interest	17-082
Ancillary procedural conditions	17-083
Additional restrictions on national law	17-084

CONTENTS

I. Remedies in the law of England and Wales	17-085
Public law remedies.....	17-086
Decisions contrary to EU law.....	17-087
Public law powers and EU law.....	17-088
Powers and duties derived from EU law.....	17-089
Primary legislation and EU law.....	17-090
Subordinate legislation and EU law.....	17-092
Challenges to EU legislative measures.....	17-094
Time limits	17-095
Interim relief in public law	17-096
Role of the court	17-100
Discretion	17-101
Habeas corpus	17-102
Appeals.....	17-103
Private law remedies	17-105
Damages against a public authority.....	17-106
Remedies against private individuals.....	17-113
Private law causes of action: damages for breach of statutory duty.....	17-114
Injunctions	17-115
Declarations.....	17-117
Negligence.....	17-118
Economic torts.....	17-119
Miscellaneous torts.....	17-120
Innominate tort.....	17-121
Statutory remedies for discrimination in employment	17-122
Equal pay.....	17-124
Discrimination.....	17-127
Restitutionary remedies	17-123
EU law as a defence	
Civil actions	17-132
Criminal law.....	17-133

18. References to the Court of Justice for a Preliminary Ruling under Article 267 of the Treaty on the Functioning of the European Union

A. Introduction.....	18-001
B. Questions that may be referred.....	18-003
C. Questions of fact and national law	18-004
D. Hypothetical questions.....	18-005
E. Courts and tribunals which may refer under Article 267	
TFEU	18-006
Arbitration tribunals	18-012
UK courts and tribunals	18-013
F. Courts and tribunals which are obliged to refer under Article 267(3) TFEU	18-014
The Supreme Court and the Court of Appeal.....	18-016
The High Court in criminal cases	18-019

CONTENTS

Administrative tribunals	18-021
G. Exceptions to the obligation to refer in Article 267	
TFEU	18-023
H. Discretion to refer under Article 267(2) TFEU.....	18-027
I. Approach of the UK courts	18-029
Decision on question of EU law must be necessary	18-030
General approach to the exercise of discretion.....	18-033
Need to determine the facts	18-034
Need to formulate questions	18-037
Need to determine questions of national law	18-038
Previous ruling of the Court of Justice.....	18-039
Acte clair	18-040
Advantages enjoyed by the Court of Justice.....	18-042
Delay and cost.....	18-043
Difficulty and importance of point of law.....	18-045
Position of the court in the judicial hierarchy.....	18-047
Desire not to overburden the Court of Justice	18-048
Wishes of the parties.....	18-049
The presence of similar actions before the Court of Justice.....	18-050
Stage at which the reference is sought.....	18-051
J. Procedure before national courts or tribunals	
High Court and Court of Appeal.....	18-053
Other courts and tribunals	18-055
Costs and legal aid	18-056
Appeals against decisions to refer or refusals to refer	18-057
Withdrawal of references	18-059
K. Procedure before the Court of Justice	18-060
Effect of a preliminary ruling on questions of validity	18-064
Effect of a preliminary ruling on a question of interpretation	18-065
Index	681