

Contents

Preface	xviii
Publisher's acknowledgements	xx
Table of cases	xxix
Table of statutes	xxxvi
Table of statutory materials	xli
Cases, law reports and case references: a guide	xlili
Introduction	2
<i>The legal system in context</i>	4
The unwritten constitution	4
A written constitution?	8
Reading list	8
On the internet	9
 Part 1 Sources of law	 10
1 Case law	12
Historical background	14
Judicial precedent	18
The hierarchy of the courts	19
How do judges really decide cases?	28
Do judges make law?	31
When should judges make law?	34
Advantages of case law	37
Disadvantages of case law	38
Answering questions	41
Summary of Chapter 1: Case law	41
Reading list	43
On the internet	43
 2 Statute law	 46
Introduction	48
House of Commons	48
House of Lords	48
Making an Act of Parliament	49
Reforms to legislative procedures	56
Answering questions	57
Summary of Chapter 2: Statute law	57

Reading list	58
On the internet	58
3 Statutory interpretation	60
Introduction	62
How are statutes interpreted?	63
Rules of interpretation	63
Interpreting European legislation	72
Aids to interpretation	72
How do judges really interpret statutes?	80
Reform of statutory interpretation	82
Answering questions	83
Summary of Chapter 3: Statutory interpretation	84
Reading list	85
On the internet	85
4 Delegated legislation	86
Introduction	88
The power to make delegated legislation	88
Why is delegated legislation necessary?	90
Control of delegated legislation	90
Criticism of delegated legislation	95
Answering questions	96
Summary of Chapter 4: Delegated legislation	98
Reading list	99
On the internet	99
5 European law	100
Introduction	102
The aims of the European Union	105
Modernising the European Union	107
<i>The institutions of the European Union</i>	107
Making European legislation	114
Types of European legislation	115
How does EU law affect the UK?	121
Answering questions	125
Summary of Chapter 5: European law	126
Reading list	127
On the internet	127
6 Custom	128
Introduction	130
When can custom be a source of law?	130
Answering questions	132
Summary of Chapter 6: Custom	132
Reading list	133

7 Equity	134
Introduction	136
How equity began	136
Common law and equity	137
The Judicature Acts	137
Equity today	138
Answering questions	140
Summary of Chapter 7: Equity	140
Reading list	141
8 Treaties	142
Introduction	144
Implementation of treaties	144
Answering questions	144
On the internet	145
9 Law reform	146
Introduction	148
Judicial change	148
Reform by Parliament	149
Pressures for reform	151
Agencies of law reform	164
Royal Commissions	165
Performance of the law reform bodies	168
Problems with law reform agencies	172
Answering questions	173
Summary of Chapter 9: Law reform	174
Reading list	174
On the internet	175
 Part 2 People working in the legal system	 176
10 The judges	178
The role of the judges	180
Judicial hierarchy	180
Appointments to the judiciary	182
Wigs and gowns	188
Training	188
Pay	189
Promotion	190
Termination of appointment	190
Independence of the judiciary	193
Criticisms of the judiciary	195
Answering questions	209
Summary of Chapter 10: The judges	209

Reading list	211
On the internet	212
11 The legal professions	214
Introduction	216
Solicitors	216
Barristers	224
Complaints	230
Background of barristers and solicitors	232
Performance of the legal professions	239
The future of the professions	241
Fusion of the professions	250
Other legal personnel	255
Do we need legal professionals?	257
Answering questions	259
Summary of Chapter 11: The legal professions	259
Reading list	261
On the internet	262
12 The jury	264
History	266
The function of the jury	267
When are juries used?	269
Qualifications for jury service	273
Summoning the jury	276
Jury vetting	277
Challenges	278
Discharging the jury	279
The secrecy of the jury	280
The verdict	282
Strengths of the jury system	283
Criticisms of the jury system	285
Reform of the jury	294
Answering questions	299
Summary of Chapter 12: The jury	299
Reading list	300
On the internet	302
13 Magistrates	304
The magistrates' courts	306
Magistrates	307
Suggested reforms	320
Answering questions	322
Summary of Chapter 13: Magistrates	322
Reading list	323
On the internet	324

14 Administration of justice	326
The Ministry of Justice and the Home Office	328
The Lord Chancellor	329
The Law Officers' Department	331
Answering questions	333
Summary of Chapter 14: Administration of justice	333
Reading list	333
On the internet	333
15 Paying for legal services	334
Introduction	336
Unmet need for legal services	336
The historical development of legal aid	339
Legal aid today	340
Problems with the legal aid system	345
Not-for-profit agencies	353
Conditional fee agreements	355
Contingency fees	358
Third party funding	360
Reform	361
Answering questions	367
Summary of Chapter 15: Paying for legal services	367
Reading list	368
On the internet	369

Part 3 Human rights 372

16 Introduction to human rights	374
Introduction	376
The European Convention on Human Rights	377
The scope of the Convention	377
The administration	378
The Human Rights Act 1998	380
Advantages of the Human Rights Act 1998	385
Disadvantages of the Human Rights Act 1998	387
A Bill of Rights for the UK?	389
The European Court of Human Rights and the CJEU	393
The European Charter of Fundamental Rights	394
Today's debates	395
Answering questions	400
Summary of Chapter 16: Introduction to human rights	401
Reading list	402
On the internet	402

17 Remedies for infringement of human rights	404
Introduction	406
Judicial review	406
<i>Habeas corpus</i>	406
Civil action for negligence	406
Compensation	410
Criminal proceedings	411
Criminal Injuries Compensation Scheme	411
The Independent Office for Police Conduct	412
The admissibility of evidence	413
The right to exercise self-defence	413
Parliamentary controls	414
The Ombudsman	414
Answering questions	414
Summary of Chapter 17: Remedies for infringement of human rights	415
Reading list	416
On the internet	416
 Part 4 Criminal justice system	 418
18 The police	420
Introduction	422
Miscarriages of justice	422
The response to the miscarriages of justice	425
Human Rights Act 1998	426
The organisation of the police	426
Police powers	429
Criticism and reform	460
Answering questions	467
Summary of Chapter 18: The police	468
Reading list	469
On the internet	472
 19 The criminal trial process	 474
The adversarial process	476
Criminal Procedure Rules	477
The Crown Prosecution Service	478
Appearance in court	486
Classification of offences	487
Allocation procedure	489
Sending for trial	490
Plea and trial preparation hearing	490
Disclosure	491
Plea bargaining	494

The trial	495
Models of criminal justice systems	501
Criticism and reform	502
Answering questions	517
Summary of Chapter 19: The criminal trial process	518
Reading list	520
On the internet	521
20 Sentencing	524
Purposes of sentencing	526
Sentencing practice	529
Guidance for the court when sentencing	530
Types of sentence	533
Reform	560
Answering questions	561
Summary of Chapter 20: Sentencing	561
Reading list	564
On the internet	566
21 Young offenders	570
Introduction	572
Criminal liability	573
Young people and the police	573
Remand and bail	574
Youth cautions	574
Trial	575
Sentencing	576
Key reports	588
Answering questions	590
Summary of Chapter 21: Young offenders	591
Reading list	593
On the internet	593
22 Criminal appeals	596
Appeals	598
The power of the prosecution to appeal	606
The Supreme Court	608
Privy Council	609
Criticism and reform of the appeal system	609
Answering questions	618
Summary of Chapter 22: Criminal appeals	619
Reading list	620
On the internet	621

Part 5 Civil justice system	622
23 The civil trial process	624
Introduction	626
History	626
The civil courts	627
The civil justice system before April 1999	628
The civil justice system after April 1999	631
Interim assessment of LASPO	649
Criticism of the civil justice system	650
Reform	662
Answering questions	666
Summary of Chapter 23: The civil trial process	666
Reading list	668
On the internet	670
24 Tribunals	672
Introduction	674
History	674
Reforming the tribunals	675
Tribunals today	677
Advantages of tribunals	682
Disadvantages of tribunals	683
Answering questions	683
Summary of Chapter 24: Tribunals	684
Reading list	686
On the internet	686
25 Alternative methods of dispute resolution	688
Introduction	690
Problems with court hearings	691
Alternative dispute resolution mechanisms	692
Examples of ADR	694
Advantages of ADR	701
Problems with ADR	702
The future for ADR	703
Answering questions	705
Summary of Chapter 25: Alternative methods of dispute resolution	705
Reading list	707
On the internet	708
26 Civil appeals and judicial review	710
Appeals in civil law cases	712
Judicial review	714
Answering questions	723
Summary of Chapter 26: Civil appeals and judicial review	724
Reading list	724
On the internet	725

Part 6 Concepts of law	726
27 Law and rules	728
Introduction	730
Austin: the command theory	730
Hart: primary and secondary rules	730
Dworkin: legal principles	732
The natural law theory	732
The function of law	732
Why are laws obeyed?	736
Answering questions	737
Summary of Chapter 27: Law and rules	737
Reading list	739
28 Law and morals	740
Introduction	742
Law and morality	743
Changes in law and morality	744
Differences between law and morality	744
Should law and morality be separate?	745
Answering questions	753
Summary of Chapter 28: Law and morals	753
Reading list	755
On the internet	755
29 Law and justice	756
Introduction	758
Aristotle	758
Natural law theories	758
Utilitarianism	758
The economic analysis of law	759
Rawls: <i>A Theory of Justice</i>	759
Nozick and the minimal state	760
Karl Marx	761
Kelsen and positivism	761
Justice in practice	761
Answering questions	762
Summary of Chapter 29: Law and justice	762
Reading list	764
 Glossary	 766
Select bibliography	768
Index	784