

# CONTENTS

Preface	ix
Introduction and Overview	xi
Acknowledgements	xv
Guide to Using the Book	xvi
Guide to the Companion Website	xviii
List of Figures	xxi
Table of Cases	xxiii
Table of Statutes	xxxiii
Table of Statutory Instruments	xliii
Table of European Legislation	xlvi
List of Abbreviations	xlvi

## 1

### LAW AND LEGAL STUDY 1

1.1 Introduction	1
1.2 The nature of law	2
1.3 Categories of law	4
1.4 Approaches to law and legal study	17
1.5 Skills	19

## 2

### THE RULE OF LAW AND HUMAN RIGHTS 23

2.1 Introduction	23
2.2 The rule of law	23
2.3 The rule of law and the judiciary	32
2.4 Human rights discourse and the rule of law	44
2.5 The Human Rights Act 1998	45

## 3

### SOURCES OF LAW: LEGISLATION 77

3.1 Introduction	77
3.2 European Union	77
3.3 Primary legislation	77
3.4 Statutory interpretation	90
3.5 Delegated or subordinate legislation	110
3.6 Law reform: the role of the Law Commission	116

## 4

## SOURCES OF LAW: CASE LAW

129

4.1	Introduction	129
4.2	Precedent	129
4.3	Law reporting	129
4.4	Precedent within the hierarchy of the courts	134
4.5	Binding precedent	152
4.6	Advantages of case law	153
4.7	Disadvantages of case law	158
4.8	The practical importance of precedent	161
4.9	Books of authority	162
4.10	Custom	163

## 5

## SOURCES OF LAW: THE EUROPEAN CONTEXT

167

5.1	Introduction	167
5.2	Sources of European Union law	178
5.3	The institutions of the European Union	181
5.4	The European Court of Human Rights	191
5.5	The European Convention and the European Union	204

## 6

## THE CIVIL COURTS

209

6.1	Introduction	209
6.2	Her Majesty's Courts and Tribunals Service	210
6.3	Magistrates' courts	212
6.4	County courts	213
6.5	The High Court of Justice	215
6.6	Appeals from the High Court	220
6.7	The Court of Appeal (Civil Division)	221
6.8	The Appeal Process	222
6.9	The Supreme Court	226
6.10	The Court of Justice of the European Union and the European Court of Human Rights	228
6.11	Judicial Committee of the Privy Council	228

## 7

## THE CIVIL PROCESS

233

7.1	Introduction	233
7.2	The need for reform	234
7.3	The new civil process	234
7.4	Case control (CPR Part 3)	238
7.5	Court and track allocation (CPR Part 26)	243
7.6	Documentation and procedures	247
7.7	Public and private hearings (CPR Part 39)	254
7.8	Appeals (CPR Part 52)	255
7.9	Remedies	256

7.10 Damages	257
7.11 Equitable remedies	260
7.12 Costs (CPR Parts 44–48)	262
7.13 What has the new system achieved?	262
7.14 Enforcement of civil remedies	264

## 8

## THE FAMILY COURTS AND PROCESS 275

8.1 Family courts	275
8.2 Private and public family law	276
8.3 The Children Act 1989 and the paramountcy principle	278
8.4 Legal aid and the family courts	279
8.5 Reformation of the family justice system	280
8.6 Media reporting in the family courts	282
8.7 Family law and philosophy	284
8.8 The future of the family courts	286

## 9

## THE CRIMINAL COURTS 291

9.1 Introduction	291
9.2 Magistrates' courts	292
9.3 The Crown Court	301
9.4 Magistrates' courts v Crown Courts	304
9.5 Criminal appeals	305
9.6 The Access to Justice Act 1999 – jurisdiction	314
9.7 Judicial Committee of the Privy Council	314
9.8 Royal Commission on Criminal Justice	314
9.9 Criminal Cases Review Commission	315
9.10 A miscarriage of justice	317
9.11 Reform of the criminal courts	319
9.12 Coroners' courts	324

## 10

## THE CRIMINAL PROCESS: (1) THE INVESTIGATION OF CRIME 331

10.1 Introduction	331
10.2 Mistrust of the system	333
10.3 Arrest	337
10.4 Interrogation, confession and admissibility of evidence	362
10.5 Revised PACE codes	385
10.6 The Criminal Justice Act 2003 amendments of the Police and Criminal Evidence Act 1984	388

## 11

## THE CRIMINAL PROCESS: (2) THE PROSECUTION 395

11.1 Introduction	395
11.2 The Crown Prosecution Service	396
11.3 Bail	409

11.4 Plea bargaining	419
11.5 The sentencing process and the separation of powers and the HRA	424

## 12

## THE JUDICIARY 449

12.1 Introduction	449
12.2 The constitutional role of the judiciary	449
12.3 Judicial offices	462
12.4 Appointment of judiciary	465
12.5 Training of the judiciary	485
12.6 Retirement of judges	492
12.7 Judicial conduct and discipline	494
12.8 Judicial immunity from suit	496
12.9 Magistrates	497

## 13

## JUDICIAL REASONING AND POLITICS 517

13.1 Introduction	517
13.2 Law and logic	517
13.3 Reasoning in general	518
13.4 Judicial reasoning	521
13.5 Judicial review	526
13.6 Politics and the judiciary	533
13.7 Politics of the judiciary	541

## 14

## THE JURY 555

14.1 Introduction	555
14.2 The role of the jury	557
14.3 The jury's function in trials	559
14.4 The selection of the jury	565
14.5 Racial bias in juries	577
14.6 The decline of the jury trial	583
14.7 Future jury reform	593
14.8 Investigation of jury behaviour	597
14.9 Conclusion	605

## 15

## ARBITRATION, TRIBUNAL ADJUDICATION AND ALTERNATIVE DISPUTE RESOLUTION 611

15.1 Introduction	611
15.2 Mediation and conciliation	613
15.3 The courts and mediation	618
15.4 Arbitration	628
15.5 Administrative tribunals	634
15.6 Ombudsman	647

## 16

## LEGAL SERVICES

663

16.1	Introduction	663
16.2	The legal profession	667
16.3	Solicitors	668
16.4	Barristers	683
16.5	Professional etiquette	686
16.6	The Courts and Legal Services Act 1990	691

## 17

## THE FUNDING OF LEGAL SERVICES

711

17.1	Introduction	711
17.2	Background to recent changes	711
17.3	The legal aid scheme	712
17.4	The Legal Aid Agency	719
17.5	The Community Legal Service	719
17.6	The Criminal Defence Service	724
17.7	Public Defender Service	727
17.8	The Magee Review 2009	728
17.9	The voluntary sector	728
17.10	Conditional fee arrangements	730
17.11	Reforms to legal aid	737

	General legal websites for the English legal system	749
	General reading	751
	Index	757