

CONTENTS

Preface	xi
The English legal system – an overview	xiii
Acknowledgements	xvii
Guide to using the book	xviii
Guide to the companion website	xx
List of figures	xxiii
Table of cases	xxv
Table of statutes	xxxix
Table of statutory instruments	xlix
Table of European legislation	li
List of abbreviations	liii

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	19
1.5 Skills	22

2

THE RULE OF LAW AND HUMAN RIGHTS

25

2.1 Introduction	25
2.2 The rule of law	25
2.3 The rule of law and the judiciary	34
2.4 Human rights discourse and the rule of law	47
2.5 The Human Rights Act 1998	48

3

SOURCES OF LAW: LEGISLATION

81

3.1 Introduction	81
3.2 European Union	81
3.3 Primary legislation	81
3.4 Statutory interpretation	95
3.5 Delegated or subordinate legislation	116
3.6 Law reform: The role of the Law Commission	125

4

SOURCES OF LAW: CASE LAW

137

4.1	Introduction	137
4.2	Precedent	137
4.3	Law reporting	137
4.4	Precedent within the hierarchy of the courts	142
4.5	Binding precedent	167
4.6	Advantages of case law	168
4.7	Disadvantages of case law	173
4.8	The practical importance of precedent	176
4.9	Books of authority	177
4.10	Custom	178

5

SOURCES OF LAW: THE EUROPEAN CONTEXT

183

5.1	Introduction	183
5.2	Sources of European Union law	194
5.3	The institutions of the European Union	197
5.4	The European Court of Human Rights	208
5.5	The European Convention and the European Union	218
5.6	A case study: The genesis of the Investigatory Powers Act (IPA) 2016	219

6

THE CIVIL COURTS

229

6.1	Introduction	229
6.2	Her Majesty's Courts and Tribunals Service	230
6.3	Magistrates' courts	233
6.4	The County Court	233
6.5	The High Court of Justice	234
6.6	Appeals from the High Court	239
6.7	The Court of Appeal (Civil Division)	239
6.8	The appeal process	240
6.9	The Supreme Court	242
6.10	The Court of Justice of the European Union and the European Court of Human Rights	245
6.11	Judicial Committee of the Privy Council	245

7

THE CIVIL PROCESS

249

7.1	Introduction	249
7.2	The need for reform	250
7.3	The new civil process	250
7.4	Case control (CPR Part 3)	254
7.5	Court and track allocation (CPR Part 26)	261
7.6	Documentation and procedures	264
7.7	Public and private hearings (CPR Part 39)	271

7.8 Appeals (CPR Part 52)	272
7.9 Remedies	273
7.10 Damages	274
7.11 Equitable remedies	277
7.12 Costs (CPR Parts 44–48)	279
7.13 What has the new system achieved?	279
7.14 Enforcement of civil remedies	281

8

THE FAMILY COURTS AND PROCESS 291

8.1 Family courts	291
8.2 Private and public family law	292
8.3 The Children Act 1989 and the paramountcy principle	294
8.4 Legal aid and the family courts	295
8.5 Reformation of the family justice system	298
8.6 Media reporting in the family courts	299
8.7 Family law and philosophy	301
8.8 The future of the family courts	304

9

THE CRIMINAL COURTS 309

9.1 Introduction	309
9.2 Magistrates' courts	311
9.3 The Crown Court	318
9.4 Magistrates' courts v Crown Courts	320
9.5 Criminal appeals	321
9.6 Criminal appeals to the Supreme Court	329
9.7 Judicial Committee of the Privy Council	329
9.8 Criminal Cases Review Commission	330
9.9 A miscarriage of justice: some lessons for the criminal justice system	332
9.10 Coroners' courts	333

10

THE CRIMINAL PROCESS: (1) THE INVESTIGATION OF CRIME 339

10.1 Introduction	339
10.2 Mistrust of the system	341
10.3 Stop and search	344
10.4 Arrest	351
10.5 Interrogation, confession and admissibility of evidence	366

11

THE CRIMINAL PROCESS: (2) THE PROSECUTION 391

11.1 Introduction	391
11.2 The Crown Prosecution Service	392
11.3 Bail	401
11.4 Plea bargaining and related issues	408
11.5 Where a prosecution succeeds: sentencing and the Human Rights Act	411

12

THE JUDICIARY

433

12.1	Introduction	433
12.2	The constitutional role of the judiciary	433
12.3	Judicial offices	446
12.4	Appointment of the judiciary	449
12.5	Training of the judiciary	467
12.6	Retirement of judges	473
12.7	Judicial conduct and discipline	474
12.8	Judicial immunity from suit	477
12.9	Magistrates	477

13

JUDICIAL REASONING AND POLITICS

497

13.1	Introduction	497
13.2	Law and logic	497
13.3	Reasoning in general	498
13.4	Judicial reasoning	501
13.5	Judicial review	506
13.6	Politics and the judiciary	514
13.7	Politics of the judiciary	521

14

THE JURY

535

14.1	Introduction	535
14.2	The role of the jury	537
14.3	The jury's function in trials	538
14.4	The selection of the jury	544
14.5	Racial bias in juries	557
14.6	The decline of the jury trial	562
14.7	Future jury reform	572
14.8	Investigation of jury behaviour	576
14.9	Conclusion	586

15

ARBITRATION, TRIBUNAL ADJUDICATION
AND ALTERNATIVE DISPUTE RESOLUTION

593

15.1	Introduction	593
15.2	Mediation and conciliation	597
15.3	The courts and ADR	605
15.4	Arbitration	612
15.5	Administrative tribunals	619
15.6	Ombudsman	632

16

LEGAL SERVICES

649

- | | | |
|------|--|-----|
| 16.1 | Introduction | 649 |
| 16.2 | The legal profession | 652 |
| 16.3 | Solicitors | 652 |
| 16.4 | Barristers | 660 |
| 16.5 | Professional etiquette | 663 |
| 16.6 | The Courts and Legal Services Act 1990 | 668 |

17

THE FUNDING OF LEGAL SERVICES

681

- | | | |
|-------|-------------------------------------|-----|
| 17.1 | Introduction | 681 |
| 17.2 | Background to recent changes | 683 |
| 17.3 | The legal aid scheme | 683 |
| 17.4 | The Legal Aid Agency | 688 |
| 17.5 | The Community Legal Service | 689 |
| 17.6 | The Criminal Defence Service | 693 |
| 17.7 | Public Defender Service | 695 |
| 17.8 | The Magee Review 2009 | 696 |
| 17.9 | The voluntary sector | 696 |
| 17.10 | Conditional fee arrangements | 698 |
| 17.11 | Recent challenges to legal aid cuts | 705 |

- | | |
|---|-----|
| General legal websites for the English legal system | 709 |
| General reading | 711 |
| Index | 717 |