

CONTENTS

| | |
|---------------------------------------|-------|
| <i>Preface</i> | v |
| <i>Acknowledgments</i> | vii |
| <i>Table of Cases</i> | xvii |
| <i>Table of Statutes</i> | xxvii |
| <i>Table of Statutory Instruments</i> | xxxi |

PART ONE: KEY IDEAS

1. INTRODUCTION TO LEGAL METHODS: APPROACHES TO LAW AND LEGAL REASONING 1

| | |
|------------------------------|----|
| What is the law? | 2 |
| Understanding law in context | 10 |

2. COMPARATIVE LAW AND LEGAL METHOD 20

| | |
|---------------------------------------------------------|----|
| Introduction to comparative law | 20 |
| Legal systems, cultures and traditions | 23 |
| “Carving the world’s law up” into individual traditions | 26 |
| Comparing two traditions: common and civil law | 29 |
| Comparative law and a globalising legal order | 41 |

PART TWO: THE LAWMAKERS

3. CONSTITUTIONAL ASPECTS OF LEGAL METHOD: THE RULE OF LAW AND THE SUPREMACY OF PARLIAMENT 47

| | |
|-----------------------------|----|
| The rule of law | 47 |
| The supremacy of Parliament | 62 |

| | |
|-----------------------------------------------------------|----|
| A note on the constitution | 67 |
| The Human Rights Act 1998 and the supremacy of Parliament | 69 |

4. CONSTITUTIONAL ASPECTS OF LEGAL METHOD: JUDICIAL REVIEW 75

| | |
|-----------------------------------------------|----|
| Judicial review and the rule of law | 75 |
| Parliamentary supremacy and judicial review | 91 |
| Defining "the state" | 94 |
| The Human Rights Act 1998 and judicial review | 95 |

5. CONSTITUTIONAL ASPECTS OF LEGAL METHOD: THE IMPACT OF MEMBERSHIP IN THE EUROPEAN UNION 97

| | |
|-------------------------------------------------------------|-----|
| The institutional structure of the EU | 97 |
| The European Union and parliamentary supremacy | 104 |
| The impact of Europe on the protection of individual rights | 111 |

6. CONSTITUTIONAL ASPECTS OF LEGAL METHOD: THE DEVOLUTION OF POWERS 118

| | |
|-------------------------------------|-----|
| Defining devolution | 118 |
| History and structure of devolution | 119 |

PART THREE: INTERPRETING STATUTES

7. STATUTORY INTERPRETATION: INTRODUCTION TO LEGISLATION 131

| | |
|----------------------------------------------------------------|-----|
| The relationship between legislation and common law | 131 |
| The legislative process | 133 |
| An introduction to interpretation | 144 |
| Methods of statutory interpretation | 158 |
| The distinction between fact and law | 170 |
| Case study on statutory interpretation: the Race Relations Act | 173 |

8. STATUTORY INTERPRETATION: THE SEARCH FOR LEGISLATIVE INTENTION 190

| | |
|---------------------------------------------------------------|-----|
| The role of intention and purpose in statutory interpretation | 190 |
| Internal aids to discerning intention | 193 |
| External aids to discerning intention | 195 |
| Legislative intention and social change | 211 |
| Interpretive policies and presumptions | 233 |

| | |
|-----------------------------------------------------------------------------------------------------------------------|------------|
| 9. STATUTORY INTERPRETATION: THE IMPACT OF THE LAW OF THE EUROPEAN UNION AND EUROPEAN HUMAN RIGHTS LAW | 238 |
| Statutory interpretation in the European Court of Justice | 238 |
| The impact of European Community law on interpretation in domestic courts | 245 |
| The interpretation of European Human Rights law | 251 |
| Human Rights Act 1998 | 251 |

PART FOUR: INTERPRETING CASES

| | |
|---------------------------------------------------------------------------------|------------|
| 10. JUDGE MADE LAW: AN INTRODUCTION TO COMMON LAW REASONING | 283 |
| Key concepts and terminology | 283 |
| The historical development of the common law | 288 |
| The process of common law reasoning: "thinking like a lawyer" | 294 |
| The implications of membership in the European Union on common law reasoning | 305 |
| Theoretical perspectives on common law reasoning | 308 |

| | |
|----------------------------------------------------------------------|------------|
| 11. JUDGE MADE LAW: A CASE STUDY ON THE LAW OF NEGLIGENCE | 318 |
| Historical background to the law of torts | 318 |
| The development of a general duty of care | 328 |
| The case law in historical context | 353 |
| The politics of common law reasoning | 358 |

PART FIVE: PEOPLE, SYSTEMS AND METHODS

| | |
|----------------------------------------------------------------|------------|
| 12. THE LEGAL PROFESSIONS | 365 |
| 13. DISPUTE RESOLUTION: THE COURTS AND ADJUDICATION | 387 |
| Introduction | 387 |
| Adjudication | 391 |
| The formality of proceedings | 396 |
| Legal representation before tribunals | 407 |
| Bargaining in the shadow of the law | 409 |
| Reform of the litigation system | 411 |
| Questioning the centrality of the courts | 424 |

| | |
|------------------------------------|------------|
| 14. MEDIATION AND ADR | 430 |
| The characteristics of mediation | 438 |
| The problems with mediation | 445 |
| Feminist perspectives on mediation | 453 |
| <i>Index</i> | 461 |