## Contents

List	of Abbreviations	xiv
Tab	le of Cases	xvii
Tab	le of Legislation	xxxvi
Part 1	I. Introduction	
	ministrative Law and Public Administration	3
	Administrative law	3
1.1	1.1.1 Public law and private law	4
	1.1.2 General principles of administrative law	9
1.2	What is administrative law about?	II
1.3	The province of administrative law	14
	The sources of administrative law	17
	Administrative law and administrative justice	18
1.6	The plan of this book	19
1.7	Conclusion	20
2. Th	e Institutional Framework of Public	
	ministration	22
2.1	The executive	22
	2.1.1 Separation of powers	23
	2.1.2 Responsible government	24
	2.1.3 Separation of powers, ministerial responsibility, and the institutional framework of public	
	administration	25
	2.1.4 Government by contract and the new public	
	management	26
	2.1.5 Centralization and decentralization	29
2.2	The legislature	34
	2.2.1 Supremacy of Parliament and the principle	
	of legality	35
	2.2.2 Representation and participation	41
2.3	The judiciary	42
	2.3.1 Separation of powers, rule of law, and	
	judicial independence	43

Part II.	The Normative	Framework	of Public
	Administration		

3. The Tasks and Functions of Public Administration	49
3.1 Bureaucratic functions	49
3.1.1 Rule-making by the executive	50
3.1.2 Adjudication by the executive	52
3.2 Powers and duties	55
3.3 Law, fact, and policy	58
3.3.1 Law and fact	59
3.3.2 Law and policy	64
3.3.3 Fact and policy	65
3.4 Conclusion	66
Section A. Public-Law Norms	
4. Procedure	69
4.1 Fair procedure in decision-making	69
4.1.1 The common law	69
4.1.1.1 The rule against bias	70
4.1.1.2 What is a fair hearing?	73
4.1.1.3 When is a fair hearing (not) required?	76
4.1.1.3.1 The nature of the affected person's intere	st 76
4.1.1.3.2 The circumstances in which the	
decision is made	81
4.1.1.3.3 The nature and content of the decision	84
4.1.1.3.4 Exclusion of the fair hearing rule	85
4.1.1.3.5 Representation	86
4.1.1.3.6 Reasons	88
4.1.2 Statute	89
4.1.3 ECHR	90
4.1.3.1 Civil rights and obligations	92
4.1.3.2 Fair and public hearing	94
4.1.3.3 Within a reasonable time	95
4.1.3.4 Independent and impartial tribunal	96
4.1.3.5 Obligations to inquire	102
4.1.3.6 The scope of the ECHR	103
4.2 Fair procedure in rule-making	106
5. Openness	114
5.1 Openness and litigation	114
5.1.1 Disclosure and inspection of documents	115
5.1.2 Public-interest immunity, not Crown privilege	116

Contents	ix

	5.1.3 Inspection to determine relevance	117
	5.1.4 Inspection to determine immunity	III
	5.1.5 Class and contents claims	121
	5.1.6 Confidentiality	122
	5.1.7 PII and closed-material	
	procedure	124
	5.1.8 Disclosure of documents and freedom	
	of information	125
5.2	Freedom of information	126
5.3	Protection of sources	132
5.4	Breach of confidence	134
5.5	Access to personal information	137
5.6	Conclusion	138
Rea	asoning	140
6.1	Discretion and rules	140
6.2	Promoting discretion	143
6.3	Discretion must not be fettered	144
	6.3.1 Fettering by decision	144
	6.3.1.1 Illegal decisions	144
	6.3.1.1.1 The 'delegation' exception	146
	6.3.1.1.2 The 'formality' exception	147
	6.3.1.1.3 Further exceptions?	148
	6.3.1.1.4 Detriment	149
	6.3.1.1.5 A balancing of interests approach	149
	6.3.1.2 Legal decisions	152
	6.3.2 Fettering by soft law	153
	6.3.3 Fettering by contract	157
	6.3.4 Fettering by undertakings, representations,	
	and practices	160
	6.3.5 Fettering by political commitments	165
6.4	Discretion must not be transferred	167
	6.4.1 Acting under dictation	167
	6.4.2 Delegation by a delegate	167
6.5	Constraining discretion	171
	6.5.1 Relevant and irrelevant considerations	173
	6.5.2 Improper purposes	178
Sub	ostance	180
7.1	Law	181
7.2	Fact	182

xii Contents

13.	Judi	icial Review: Remedies	299
	13.1	Public-law remedies	299
		13.1.1 Quashing orders	299
		13.1.2 Prohibiting orders	300
		13.1.3 Mandatory orders	301
		13.1.4 Quashing, prohibiting, and mandatory	
		orders are public-law remedies	301
		13.1.5 The Crown and the public-law remedies	302
	13.2	Private-law remedies	303
		13.2.1 Injunction	303
		13.2.2 Declaration	306
	13.3	Discretion to refuse a remedy	307
	13.4	Monetary remedies	310
		13.4.1 Damages	310
		13.4.1.1 Damages for illegality	311
		13.4.1.2 Damages for risk	312
		13.4.2 Voluntary compensation schemes	313
		13.4.3 Restitution	314
		13.4.4 European Union law	314
		13.4.5 Human rights law	315
14.	App	eals	316
	14.1	Institutions	316
		14.1.1 Administrative tribunals	316
		14.1.2 Tribunals and courts	319
	14.2	Characteristics	326
		14.2.1 Nature	326
		14.2.2 Availability and access	331
		14.2.3 Mechanics	331
		14.2.3.1 Review of decisions	331
		14.2.3.2 Time-limits for appeals	332
		14.2.3.3 Permission to appeal	332
		14.2.3.4 Inquisitorial procedure	333
		14.2.3.5 Precedent	334
		14.2.4 Outcomes	336
	14.3	Conclusion	336
15.	Civi	l Claims	338
	15.1	Institutions	338
	15.2	Availability and access	338
	15.3	Mechanics	338
	15.4	Civil proceedings against the Crown	339

Contents	xiii
Section B. Beyond Courts and Tribunals	
<ul><li>16. The Bureaucracy</li><li>16.1 Bureaucratic values</li><li>16.2 Internal review and complaint systems</li></ul>	347 347 351
17. Parliament 17.1 Secondary legislation 17.2 Implementation 17.2.1 Ministerial responsibility 17.2.2 Questions 17.2.3 Select committees	359 359 363 363 365 367
18.1 The Parliamentary Ombudsman 18.1.1 Caseload 18.1.2 Procedure 18.1.3 The PO and Parliament 18.1.4 The PO's remit 18.1.5 Maladministration 18.1.6 Remedies 18.1.7 The PO, tribunals, and courts 18.2 The Health Service Ombudsman 18.3 The Local Government Ombudsman 18.4 The ombudsman system 18.5 The nature and value of 'ombudsmanry'	370 371 371 372 373 375 377 380 382 386 387 389 390
19. An Administrative Justice System?  19.1 Accessibility and systematization  19.2 Alternative and proportionate dispute resolution  19.3 Contracting-out and administrative justice	394 394 396 399
Part IV. The Purposes and Effects of Administrative Law	
20. Functions of Administrative Law 20.1 What is administrative law for? 20.2 What does administrative law achieve? 20.2.1 Impact and values 20.2.2 Methodological issues 20.2.3 Impact research 20.3 Conclusion	405 405 409 409 411 414 422
Index State of the Control of the Co	423