

# CONTENTS

Preface to first edition	xii
Preface to fifth edition	xii
Statutes	xiii
Cases	xiv
Command papers, Hansard, House of Commons papers and other official publications	xxvi
Books, pamphlets, memoranda and articles	xxvii
Acknowledgments	xxx

CHAPTER 1	THE ORGANIZATION OF TRIAL COURTS AND TRIBUNALS	I
1	The work handled by the courts	2
	(a) <i>The civil courts</i>	2
	(b) <i>The criminal courts</i>	II
2	Problems of trial courts' organization	22
	(a) <i>The relationship between higher and lower trial courts – criminal courts</i>	22
	(b) <i>The relationship between higher and lower trial courts – civil courts</i>	25
3	Should there be a unified family court?	34
4	The proper role of courts and tribunals	41

CHAPTER 2	PRE-TRIAL CIVIL PROCEEDINGS	51
1	To what extent can one find out what happened before the issue of proceedings?	51
	(a) <i>Is there any property in a witness?</i>	51
	(b) <i>Can the police be required to</i>	

	<i>produce their report of a traffic accident?</i>	54
	(c) <i>Can a victim of an accident get the factory inspector's report?</i>	55
	(d) <i>Can the injured person inspect the premises or machinery where the accident occurred?</i>	56
2	What causes cases to settle?	58
3	Initiation of proceedings	62
	(a) <i>Should solicitors have a monopoly of the right to commence legal proceedings on behalf of others?</i>	62
	(b) <i>Should proceedings be started in the High Court or in a county court?</i>	64
	(c) <i>What kind of proceedings should be started?</i>	66
	(d) <i>Venue</i>	67
	(e) <i>Issue and service of proceedings</i>	68
	(f) <i>Representative and class actions</i>	68
4	Interlocutory proceedings	71
	(a) <i>Acknowledgement of service</i>	71
	(b) <i>Summary judgment</i>	71
	(c) <i>Pleadings</i>	73
	(d) <i>Payment into court</i>	76
	(e) <i>Discovery and 'cards on the table'</i>	80
	(f) <i>The Civil Justice Review proposals</i>	100
	(g) <i>The pre-trial hearing</i>	104
	(h) <i>Delays</i>	109
	(i) <i>Conclusion</i>	122
CHAPTER 3	PRE-TRIAL CRIMINAL PROCEEDINGS	128
1	Questioning of suspects by the police	129
	(a) <i>The importance of questioning</i>	129
	(b) <i>Regulation of the processes of questioning</i>	130
	(c) <i>Whom can the police question?</i>	133
	(d) <i>Is the citizen obliged to answer police questions?</i>	133
	(e) <i>The legal consequences of silence in the face of police questioning</i>	139

(f) <i>The recommendations of the Criminal Law Revision Committee</i>	141
(g) <i>Should the right of silence be abolished?</i>	142
(h) <i>The Royal Commission's proposals</i>	145
(i) <i>Safeguards for the suspect</i>	148
2 Detention and arrest	166
(a) <i>Can a person be held in the police station if he is not under arrest?</i>	166
(b) <i>In what circumstances can someone be stopped in the street?</i>	166
(c) <i>Proposals for extension of the right to stop on the street</i>	170
(d) <i>When should the police be entitled to stop and search persons in the street?</i>	171
(e) <i>What constitutes an arrest?</i>	177
(f) <i>Procedure on arrest</i>	179
(g) <i>Can an arrested person be held without charges?</i>	182
(h) <i>What are the time limits on police detention without charges?</i>	183
3 Police powers of search and seizure	187
(a) <i>On arrest</i>	187
(b) <i>Powers to enter premises other than after an arrest</i>	191
(c) <i>Getting a search warrant</i>	198
(d) <i>Executing a search warrant</i>	199
(e) <i>Seizure of evidence</i>	200
(f) <i>The power to freeze the suspect's assets</i>	203
4 The prosecution process	204
(a) <i>Who prosecutes?</i>	204
(b) <i>Who should prosecute?</i>	206
(c) <i>The Crown Prosecution Act 1985</i>	212
(d) <i>The prosecution have a wide discretion</i>	214
(e) <i>Judicial control of police discretion in prosecution policy</i>	229
(f) <i>Duties of prosecuting lawyers</i>	232

	(g) <i>The duties of defence counsel</i>	237
5	Bail	239
	(a) <i>Bail from the police station</i>	239
	(b) <i>Bail decisions by courts</i>	241
	(c) <i>The period of remand in custody and fresh applications for bail</i>	246
	(d) <i>Appeals against a refusal of bail</i>	248
	(e) <i>Causes for concern</i>	249
6	Information supplied to the opponent	250
	(a) <i>Evidence the prosecution intend to call</i>	250
	(b) <i>Evidence the prosecution do not intend to call</i>	252
	(c) <i>Miscellaneous</i>	255
	(d) <i>Disclosure by the defence</i>	257
7	The guilty plea	262
	(a) <i>The innocent who plead guilty</i>	263
	(b) <i>Does pleading guilty mean getting a lighter sentence?</i>	267
	(c) <i>Bargaining with the police over the plea</i>	271
	(d) <i>Bargaining with the prosecution and the judge over the plea</i>	273
8	Committal proceedings	279
9	Voluntary bill of indictment	284
10	Publicity and contempt	284
11	Delays in criminal cases	287
CHAPTER 4	THE TRIAL PROCESS	291
1	The inquisitorial compared with the adversary system	291
	(a) <i>The judge must not intervene unduly</i>	293
	(b) <i>The judge does not call or examine the witnesses</i>	295
	(c) <i>The inquisitorial system contrasted</i>	303
	(d) <i>Tribunals and the adversary system</i>	313
	(e) <i>The role of the justices' clerk</i>	319
2	The advantages of being represented	325
3	Handicaps of the unrepresented	326
	(a) <i>In the magistrates' courts</i>	327

(b) <i>In the county courts</i>	332
(c) <i>Voluntary arbitration scheme for small claims</i>	334
(d) <i>Small claims 'arbitration' in county courts</i>	335
4 Establishing the facts in court: the unreliability of human testimony	339
5 The principle of orality	345
6 Justice must be seen to be done	346
7 The exclusionary rules of evidence	348
(a) <i>Evidence excluded because it might be unduly prejudicial</i>	349
(b) <i>Evidence excluded because it is inherently unreliable</i>	357
(c) <i>Evidence excluded because its admissibility would be against the public interest</i>	367
8 Who wins trials?	386

CHAPTER 5 THE JURY	387
(a) <i>The origins of the jury system</i>	387
(b) <i>Eligibility for jury service</i>	387
(c) <i>Challenging of jurors</i>	391
(d) <i>Vetting of jury panels</i>	399
(e) <i>The extent to which juries are used</i>	404
(f) <i>Aids to the jury</i>	410
(g) <i>The quality of jury decision-making</i>	412
(h) <i>Respective roles of judge and jury</i>	418
(i) <i>Majority jury verdicts</i>	421
(j) <i>Retrials on jury disagreement</i>	422
(k) <i>Will the Court of Appeal consider what happened in the jury room?</i>	423
(l) <i>Publication of the secrets of the jury room</i>	426
(m) <i>Operation of the jury in former times</i>	427
(n) <i>Does the jury acquit too many defendants?</i>	430
(o) <i>Which level of criminal court acquits most defendants?</i>	437

	(p) <i>Should the jury be retained?</i>	438
CHAPTER 6	COSTS AND LEGAL AID	446
1	Can we afford the cost of British justice?	446
	(a) <i>The level of costs</i>	446
	(b) <i>The categories of costs</i>	450
	(c) <i>Controls on fees</i>	453
	(d) <i>What can be done about costs in English trials?</i>	454
	(e) <i>Should costs follow the event?</i>	456
	(f) <i>Exceptions to the indemnity rule of costs</i>	464
2	Legal aid	472
	(a) <i>Legal aid in civil proceedings</i>	474
	(b) <i>Costs of successful defendants against legally aided plaintiffs</i>	478
	(c) <i>Legal aid in criminal proceedings</i>	479
	(d) <i>Duty-solicitor schemes</i>	486
	(e) <i>Legal advice and assistance</i>	488
	(f) <i>Legal aid for groups</i>	490
	(g) <i>Legal aid work heavily concentrated</i>	491
	(h) <i>Is there a need for legal aid in tribunals?</i>	492
	(i) <i>Legal aid administration</i>	495
CHAPTER 7	THE ENFORCEMENT OF JUDGMENT DEBTS	497
1	Methods of enforcement	497
2	The Payne Committee's report	504
	(a) <i>Criticisms of the system</i>	505
	(b) <i>Payne Committee's proposals</i>	507
	(c) <i>Implementation of the Payne Committee's report</i>	508
3	The National and Welsh Consumer Councils' report	508
	(a) <i>Criticisms of the present system</i>	510
	(b) <i>Proposals for reform</i>	512
	(c) <i>Enforcement office in Northern Ireland</i>	514

(d) <i>The Civil Justice Review Consultation Paper</i>	515
(e) <i>Computerization</i>	517

## CHAPTER 8 APPEALS 520

1 The structure of appeal courts	521
(a) <i>Civil cases</i>	521
(b) <i>Criminal cases</i>	522
(c) <i>The Judicial Committee of the Privy         Council</i>	522
2 The appeal process	523
(a) <i>The right to appeal</i>	523
(b) <i>Practice and procedure of appeals</i>	525
(c) <i>The grounds of appeal</i>	538
(d) <i>Powers of the Court of Appeal</i>	538
(e) <i>Review by appeal courts of findings         of fact by trial courts</i>	543
(f) <i>Review by the appeal court of         discretionary decisions</i>	544
(g) <i>Power to receive fresh evidence</i>	546
(h) <i>The 'proviso' to s.2 of the Criminal         Appeal Act 1968</i>	552
(i) <i>Power to order retrials in criminal         cases</i>	555
(j) <i>Rates of appeal and success rates</i>	560
(k) <i>'Appeal' by way of judicial review</i>	561
3 The machinery for avoiding a miscarriage of justice	563

## CHAPTER 9 THE LEGAL PROFESSION 574

1 The component parts of the profession	574
(a) <i>The Bar</i>	574
(b) <i>The solicitors' branch</i>	583
(c) <i>Law centres</i>	586
2 Monopolies and restrictive practices	592
(a) <i>The divided profession</i>	592
(b) <i>The solicitors' conveyancing         monopoly</i>	603
(c) <i>Rights of audience</i>	613
3 The use of lawyers	627

## INDEX 629