

## CONTENTS

<i>Preface to the Third Edition</i>	vii
<i>Preface to the Second Edition</i>	viii
<i>Preface to the First Edition</i>	x
<i>Acknowledgments</i>	xiii
<i>Table of Cases</i>	xxi
<i>Table of Statutes</i>	xxvi

### Book I

#### Introduction to Law

1. THE NATURE AND FUNCTIONS OF LAW	3
“Truisms” about Human Nature	3
Social Order and Law	4
The Normative Character of Law and Morality	8
The Legitimacy of Law	11
2. METHODS OF SOCIAL CONTROL THROUGH LAW	13
The Penal Technique	15
The Grievance—Remedial Technique	21
The Private Arranging Technique	24
The Constitutive Technique	26
The Administrative—Regulatory Technique	26
The Fiscal Technique	28
The Conferral of Social Benefits Technique	28
Combinations of Techniques	30
The Legal Techniques and The Sources of Law	30
3. CLASSIFICATIONS OF LAW	32
Subject Classifications	32
Law and Equity	34
Civil and Criminal Law	38
Public and Private Law	40
Conclusion	44



## Book II

**Sources of Law and Methods of Legal Reasoning**

4. LAW AND FACT	49
Who should decide a question—Layman or Judge	52
Who should decide a question—Trial Court or Appeal Court	55
When does a decision on a question bind future Courts?	58
Conclusion	59
5. FACT FINDING AND DISPUTE RESOLUTION	62
The Adversarial Method	62
The Inquisitorial Method	65
Merits of the Methods	67
Non-Adjudicatory Methods	70
6. DETERMINING THE LAW	74
Sources of Law	74
Legal Language	76
Legal Reasoning and Logic	78
Legal Reasoning and Justification	81
The Limits of Legal Reasoning	82
Conclusion	84
7. CASE LAW	86
Analogy, Rules and Precedent	87
The Formulation and Application of Case Law Rules	90
The Ratio Decidendi	90
Obiter Dictum	95
Finding the Ratio of Decisions in Appellate Courts	97
Distinguishing Cases	99
Stare Decisis and the Hierarchy of Courts	102
A Comparison with the Position of Case Law in French and German Law	110
Conclusion	111
8. CASE LAW IN OPERATION	116
The Background	116



The Case Law Development	121
Conclusion	127
9. LEGISLATION	138
An Outline of the Legislative Process	138
Mechanics of Enactment	140
Legislation and Language	141
Clear and Problem Cases	143
Interpretation of Legislation by the Courts	144
Current Judicial Practice	160
Reform Proposals	161
10. LEGISLATION IN OPERATION	167
The Scheme of the Homelessness Provisions	167
The Problems	169
International Homelessness—A Wider Perspective	175
Housing Act 1985	183
Code of Guidance	185
11. CODE AND CODIFICATION	190
Bentham and the History of Codification in England and Wales	190
Choosing an Appropriate Model	192
Interpretation and the Role of The Judge	192
The Pros and Cons of Codification	193
Codification in Operation—The Sale of Goods Act 1979	196
12. DOCTRINE	200
General Comparisons of Approach	200
The Position of Doctrine in English Law	200
The Status and Influence of Doctrine	204
The Citation of Modern Writers	205
13. EUROPEAN INFLUENCES	210
The European Convention of Human Rights	210
The European Community (E.C.)	212
Institutional Framework	212
Sources of Law	213
The Role of the E.C.J.	215
The Court and its Legal Method	215



## Book III

**Wider Dimensions of the Law and Legal Method**

14. THE CHANGING LAW	225
The Nature of Legal Change	225
Legal Change and Legal Policy	226
Legal Change and Legal Method	227
Law Reform and Legal Method	229
Limitations of Judicial Law Reform	230
Permanent Law Reform Agencies	231
The Pattern of Legal Change	231
Changing Tort Law	232
Conclusion	242
15. COMPARATIVE LEGAL CULTURES AND METHOD	245
The Concept of Legal Culture	245
Types of Legal Culture	246
16. LAW, JUSTICE AND POLICY	257
Standards of Good Legal Craftsmanship and Process	258
Identifying Substantive Legal Values	259
The Concept of Justice	260
The Concept of Policy	265
Justice, Policy and Practical Reasoning	269

**Appendices**

1. THE LAW LIBRARY, LEGAL MATERIALS AND THEIR USE	275
United Kingdom and Ireland	275
Primary Sources	275
1. Statutes	275
2. Delegated Legislation	278
3. Law Reports	278
The Year Books 1282–1537	278
Named Reporters 1537–1865	279
The English reports full reprint	279
Law Reports 1865 to date	280



Appeal Cases	280
Other Series	280
Scotland	281
Ireland	281
Authorised Abbreviations for Modern Law Reports	281
Law Reports, 1st, 2nd and 3rd series	
1st 1865–1875, 2nd 1875–1890, 3rd 1891–	287
Computer Retrieval of Primary Source Material	288
Secondary Materials	290
Encyclopedias of English Law	290
Digests	291
Textbooks	291
The Scottish Institutional Writers	292
Legal Dictionaries	292
Periodicals	293
Law reform materials	293
Australia	294
Primary Materials	294
Secondary Materials	294
Canada	295
Primary Materials	295
Secondary Materials	296
New Zealand	297
Primary Materials	297
Secondary Materials	297
The United States of America	298
Primary Materials	298
Secondary Materials	299
France	300
Germany	300
European Community	301
 2. SPECIMEN SOURCES	 302
A Statute—Human Organ Transplants Act 1989	302
A Statutory Instrument—The Boot and Floor Polish Wages Council (Great Britain) (Abolition) Order 1974	306
A Common Market Law Report—Auditeur Du Travail at the Tribunal de <i>Mons v. Cagnon and Taquet</i> (Case 69/74) [1975] 2 C.M.L.R. 68	308



An English Law Report— <i>Gold v. Haringey Health Authority</i> [1988] QB 481	316
<i>Bibliography of Further Reading</i>	328
<i>Name Index</i>	331
<i>Subject Index</i>	333